

MT LEGISLATIVE HISTORY

Chapter 713 1979

Bill (H) 800 S _____

Original bill & hist. / C

H. Committee on Judiciary

S. Committee on _____

Hearing Date(s) FEB 20 ✓ C

Hearing Date(s) MAR 15 ✓ C

_____ C

MAR 21 ✓ C

_____ C

_____ C

_____ C

_____ C

Date Out _____ C

MAR 22 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

The Law Library has no Conference Committee minutes.

CHAPTER NO. 713

HOUSE BILL NO. 877

INTRODUCED BY KEEDY, SEIFERT, CONROY, SCULLY, FABREGA, GOULD,
MAGONE, KANDUCH, NORDTVEDT, MARKS, FAGG, PORTER, C. SMITH,
DONALDSON, FEDA, CURTISS, ELLISON, PISTORIA,
STAIGMILLER, MANNING, K. ROBBINS, UNDERDAL,
FRATES, SALES, PAVLOVICH, UHDE, DOZIER,
BAETH, MANUEL, HEMSTAD, MEYER, EUDAILY,
DAY, STOBIE, KVAALEN, HAYNE

IN THE HOUSE

February 19, 1979	Introduced and referred to Committee on Judiciary.
February 20, 1979	Committee recommend bill do pass. Report adopted.
February 22, 1979	Second reading, do pass.
February 23, 1979	Considered correctly engrossed. Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Judiciary.
March 22, 1979	Committee recommend bill be concurrent in as amended. Report adopted.
March 24, 1979	Motion pass consideration.
March 26, 1979	Second reading, concurred in as amended.
March 27, 1979	Third reading, concurred in as amended. On motion taken from third reading and referred to second reading. Motion adopted. Second reading, concurred in as amended.

March 27, 1979

On motion rules suspended.
Bill placed on Calendar for
third reading this day.

Third reading, concurred in
as amended.

IN THE HOUSE

March 28, 1979

Returned from second house.
Concurred in as amended.

March 31, 1979

Second reading, amendments
rejected.

On motion Joint Conference
Committee requested.

April 2, 1979

Joint Conference Committee
appointed.

April 3, 1979

Joint Conference Committee
dissolved.

On motion Joint Conference
Committee requested and
appointed.

April 9, 1979

Joint Conference Committee
dissolved.

On motion Joint Conference
Committee requested.

April 11, 1979

Joint Conference Committee
appointed.

Joint Conference Committee
dissolved.

On motion Joint Conference
Committee requested.

April 12, 1979

Joint Conference Committee
dissolved.

On motion Free Joint Con-
ference Committee requested
and appointed.

April 17, 1979

Free Joint Conference Committee
reported.

Adopted by second house.

April 18, 1979

Second reading, adopted.

Third reading, adopted.

Sent to enrolling.

Reported correctly enrolled.

House BILL NO. 877INTRODUCED BY Kenny Seibert Conroy July 23

A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE DEFENSE

OF MENTAL DISEASE OR DEFECT IN CRIMINAL ACTIONS; AMENDING

SECTIONS 46-14-201 THROUGH 46-14-203, 46-14-212, 46-14-213,

46-14-221, 46-14-222, 46-14-301, AND 46-15-301, MCA; AND

REPEALING SECTIONS 46-14-101 AND 46-14-211, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-14-201, MCA, is amended to read:

~~"46-14-201. Affirmative--defense-----requirement~~~~Requirement of notice -- form of verdict and judgment. (1)~~~~Mental-disease-or--defect--excluding--responsibility--is--an~~~~affirmative--defense--which--the--defendant--must--establish--by--a~~~~preponderance-of-the-evidence.~~~~(2)(1) Evidence of mental disease or defect excluding~~
~~responsibility is not admissible in a trial on the merits~~~~unless the defendant, at the time of entering his plea of~~
~~not guilty or within 10 days thereafter or at such later~~
~~time as the court may for good cause permit, files a written~~
~~notice of his purpose to rely on such defense.~~~~(3) The defendant shall give similar notice when in a~~
~~trial on the merits, he intends to rely on a mental disease~~
~~or defect to prove that he did not have a particular state~~

1 of mind which is an essential element of the offense
2 charged. Otherwise, except on good cause shown, he shall not
3 introduce in his case in chief expert testimony in support
4 of that defense.

5 ~~(4)(2)~~ When the defendant is acquitted on the ground
6 of that due to a mental disease or defect excluding
7 responsibility he could not have a particular state of mind
8 that is an essential element of the offense charged, the
9 verdict and the judgment shall so state."

10 Section 2. Section 46-14-202, MCA, is amended to read:

11 "46-14-202. Psychiatric examination of defendant. (1)

12 ~~When the--defendant--has--filed--a--notice--of--intention--to--rely~~
13 ~~on--the--defense--of--mental--disease--or--defect--excluding~~
14 ~~responsibility--or~~ there is reason to doubt his the
15 defendant's fitness to proceed or reason to believe that
16 mental disease or defect of the defendant will otherwise
17 become an issue in the cause, the court shall appoint at
18 least one qualified psychiatrist or shall request the
19 superintendent of Warm Springs state hospital to designate
20 at least one qualified psychiatrist, which designation may
21 be or include himself, to examine and report upon the mental
22 condition of the defendant.

23 (2) The court may order the defendant to be committed
24 to a hospital or other suitable facility for the purpose of
25 the examination for a period of not exceeding 60 days or

1 such longer period as the court determines to be necessary
2 for the purpose and may direct that a qualified psychiatrist
3 retained by the defendant be permitted to witness and
4 participate in the examination.

5 (3) In the examination any method may be employed
6 which is accepted by the medical profession for the
7 examination of those alleged to be suffering from mental
8 disease or defect."

9 Section 3. Section 46-14-203, MCA, is amended to read:

10 "46-14-203. Report of the examination. (1) The report
11 of the examination shall include the following:

12 (a) a description of the nature of the examination;

13 (b) a diagnosis of the mental condition of the
14 defendant;

15 (c) if the defendant suffers from a mental disease or
16 defect, an opinion as to his capacity to understand the
17 proceedings against him and to assist in his own defense;
18 and

19 ~~(d) when a notice of intention to rely on the defense~~
20 ~~of irresponsibility has been filed, an opinion as to the~~
21 ~~ability of the defendant to appreciate the criminality of~~
22 ~~his conduct or to conform his conduct to the requirements of~~
23 ~~law at the time of the criminal conduct charged; and~~

24 (e)(d) when directed by the court, an opinion as to
25 the capacity of the defendant to have a particular state of

1 mind which is an element of the offense charged.

2 (2) If the examination cannot be conducted by reason
3 of the unwillingness of the defendant to participate
4 therein, the report shall so state and shall include, if
5 possible, an opinion as to whether the unwillingness of the
6 defendant was the result of mental disease or defect.

7 (3) The report of the examination shall be filed in
8 triplicate with the clerk of court, who shall deliver copies
9 to the county attorney and to counsel for the defendant."

10 Section 4. Section 46-14-212, MCA, is amended to read:

11 "46-14-212. Examination by psychiatrist chosen by
12 state or defendant. If either the defendant or the state
13 wishes the defendant to be examined by a qualified
14 psychiatrist or other expert selected by the one proposing
15 the examination in order to determine the defendant's
16 fitness to proceed or whether he had, at the time the
17 offense was committed, a particular state of mind which is
18 an essential element of the offense, the examiner shall be
19 permitted to have reasonable access to the defendant for the
20 purpose of the examination."

21 Section 5. Section 46-14-213, MCA, is amended to read:

22 "46-14-213. Psychiatric testimony upon trial. (1) Upon
23 the trial, any psychiatrist who reported under 46-14-202 and
24 46-14-203 may be called as a witness by the prosecution or
25 by the defense. If the issue is being tried before a jury,

1 the jury may not be informed that the psychiatrist was
 2 designated by the court or by the superintendent of Warm
 3 Springs state hospital. Both the prosecution and the
 4 defense may summon any other qualified psychiatrist or other
 5 expert to testify, but no one who has not examined the
 6 defendant is competent to testify to an expert opinion with
 7 respect to the mental condition or--responsibility of the
 8 defendant, as distinguished from the validity of the
 9 procedure followed by or the general scientific propositions
 10 stated by another witness.

11 (2) When a psychiatrist or other expert who has
 12 examined the defendant testifies concerning the defendant's
 13 mental condition, he may make a statement as to the nature
 14 of his examination, his diagnosis of the mental condition of
 15 the defendant at the time of the commission of the offense
 16 charged, and his opinion as to the ability of the defendant
 17 to appreciate-the-criminallity-of-his-conduct-to-conform-his
 18 conduct-to-the-requirements-of-law-or-to have a particular
 19 state of mind which is an element of the offense charged.
 20 The expert may make any explanation reasonably serving to
 21 clarify his diagnosis and opinion and may be cross-examined
 22 as to any matter bearing on his competency or credibility or
 23 the validity of his diagnosis or opinion."

24 Section 6. Section 46-14-221, MCA, is amended to read:

25 "46-14-221. Determination of fitness to proceed --

1 effect of finding of unfitness -- expenses. (1) The issue of
 2 the defendant's fitness to proceed may only be raised by the
 3 defendant with the advice of counsel. When the defendant's
 4 fitness--to--proceed issue is drawn-in-question raised, the
 5 issue it shall be determined by the court. If neither the
 6 county attorney nor counsel for the defendant contests the
 7 finding of the report filed under 46-14-203, the court may
 8 make the determination on the basis of the report. If the
 9 finding is contested, the court shall hold a hearing on the
 10 issue. If the report is received in evidence upon the
 11 hearing, the parties have the right to summon and
 12 cross-examine the psychiatrists who joined in the report and
 13 to offer evidence upon the issue.

14 (2) If the court determines that the defendant lacks
 15 fitness to proceed, the proceeding against him shall be
 16 suspended, except as provided in subsection (4) of this
 17 section, and the court shall commit him to the custody of
 18 the director of the department of institutions to be placed
 19 in an appropriate institution of the department of
 20 institutions for so long as the unfitness endures.

21 (3) If the court determines that the defendant lacks
 22 fitness to proceed due to the fact that the person is
 23 developmentally disabled, as defined by 53-20-102, the
 24 proceeding against him shall be suspended, except as
 25 provided in subsection (4) of this section, and the court

1 shall proceed to secure treatment as provided in chapter 20,
2 part 1, or chapter 21, part 1, of Title 53.

3 (4) The fact that the defendant is unfit to proceed
4 does not preclude any legal objection to the prosecution
5 which is susceptible to fair determination prior to trial
6 and without the personal participation of the defendant.

7 (5) The expenses of sending the defendant to the
8 custody of the director of the department of institutions to
9 be placed in an appropriate institution of the state
10 department of institutions, of keeping him there, and of
11 bringing him back are in the first instance chargeable to
12 the county in which the indictment was found or the
13 information filed; but the county may recover them from the
14 estate of the defendant, if he has any, or from a town,
15 city, or county bound to provide for and maintain him
16 elsewhere."

17 Section 7. Section 46-14-222, MCA, is amended to read:

18 "46-14-222. Proceedings if fitness regained. When the
19 court, on its own motion or upon the application of the
20 director of the department of institutions, the county
21 attorney, or the defendant or his legal representative,
22 determines, after a hearing if a hearing is requested, that
23 the defendant has regained fitness to proceed, the
24 proceeding shall be resumed. If, however, the court is of
25 the view that so much time has elapsed since the commitment

1 of the defendant that it would be unjust to resume the
2 criminal proceedings, the court may dismiss the charge and
3 may order the defendant to be discharged or, subject to the
4 law governing the civil commitment of persons suffering from
5 ~~serious mental disease--or--defect illness,~~ order the
6 defendant committed to an appropriate institution of the
7 department of institutions."

8 Section 8. Section 46-14-301, MCA, is amended to read:

9 "46-14-301. Commitment upon acquittal on the ground of
10 ~~irresponsibility lack of mental state~~ -- hearing to
11 determine release or discharge. (1) When a defendant is
12 acquitted on the ground of ~~that due to a~~ mental disease or
13 ~~defect excluding--responsibility he could not have a~~
14 ~~particular state of mind that is an essential element of the~~
15 ~~offense charged,~~ the court shall order him committed to the
16 custody of the superintendent of Warm Springs state hospital
17 to be placed in an appropriate institution for custody,
18 care, and treatment.

19 (2) A person so confined shall have a hearing, unless
20 waived, within 50 days of his confinement to determine his
21 present mental condition and whether he may be discharged or
22 released without danger to others. The court shall cause
23 notice of the hearing to be served upon the person, his
24 counsel, and the prosecuting attorney. Such a hearing shall
25 be deemed a civil proceeding, and the burden shall be upon

1 the defendant to prove by a preponderance of the evidence
2 that he may be safely released.

3 (3) According to the determination of the court upon
4 the hearing, the defendant shall be discharged or released
5 on such conditions as the court determines to be necessary
6 or shall be committed to the custody of the superintendent
7 of the Warm Springs state hospital to be placed in an
8 appropriate institution for custody, care, and treatment."

9 Section 9. Section 46-15-301, MCA, is amended to read:
10 "46-15-301. Discovery of witnesses; notice of certain
11 defenses. In all criminal cases originally triable in
12 district court the following rules apply:

13 (1) For the purpose of notice only and to prevent
14 surprise, the prosecution shall furnish to the defendant and
15 file with the clerk of the court at the time of arraignment
16 a list of the witnesses the prosecution intends to call. The
17 prosecution may, any time after arraignment, add to the list
18 the names of any additional witnesses upon a showing of good
19 cause. The list shall include the names and addresses of the
20 witnesses. This subsection does not apply to rebuttal
21 witnesses.

22 (2) (a) For purpose of notice only and to prevent
23 surprise, the defendant shall furnish to the prosecution and
24 file with the clerk of the court, at the time of entering
25 his plea of not guilty or within 10 days thereafter or at

1 such later time as the court may for good cause permit, a
2 statement of intention to interpose the defense of mental
3 disease--or--defect, self-defense, or alibi or the defense
4 that the defendant did not have a particular state of mind
5 that is an essential element of the offense charged.

6 (b) If the defendant intends to interpose any of these
7 defenses, he shall also furnish to the prosecution and file
8 with the clerk of the court the names and addresses of all
9 witnesses to be called by the defense in support thereof.
10 Prior to trial the defendant may, upon motion and showing of
11 good cause, add to the list of witnesses the names of any
12 additional witnesses. After the trial commences, no
13 witnesses may be called by the defendant in support of these
14 defenses unless the name of the witness is included on the
15 list, except upon good cause shown."

16 Section 10. Repealer. Sections 46-14-101 and
17 46-14-211, MCA, are repealed.

-End-

HB 877

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
HB 831	allow county commissioners to cancel delinquent county real estate taxes, etc.	2/17	Burnett	2/20	do not pass	2/20
HB 877	abolish mental disease as a defense	2/19	Keedy	2/20	pass	2/20
HB 878	prohibit involuntary commitment to a mental health facility	2/19	Keedy	2/20	do not pass	2/20
HB 885	redefine term seriously mentally ill	2/20	Keedy	2/20	pass	2/20
HB 887	revise laws relating of insurance companies	2/20	Scully	2/20	pass	2/20

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
February 20, 1979

The meeting was called to order by Chairman Scully at 7:30 a.m. in room 436 of the Capitol Building on Tuesday, February 20. All members were present except Representative Willy Day, excused to chair the Agriculture Committee. Scheduled for hearing were House Bills 746, 797, 798, 799, 801, 803, 812, 820, 831, 833, 840, 836, 861, 845, 865, 870, 877 and 878.

HOUSE BILL NO. 820:

This bill will provide that the members on a police commission will not be replaced during a hearing until a decision has been made. Representative Pistoria, as sponsor of the bill, gave examples of cases. He commented that he was controversial and that a controversial person tells the truth and people don't want to hear the truth. He gave an example of the case which led up to the bill being drafted, and commented that they were on the case 2 1/2 years and during the case they changed the members. The old members should finish the case.

There was very little discussion and no questions and the hearing closed on House Bill 820.

HOUSE BILL NO. 833:

Representative McBride. This bill will address some of the problems dealing with solar energy and solar easements.

RONALD POGUE:

Alternative Energy Resources Organization. What we are looking for is some type of legal rights so that when you build a solar reflector you will have the use of it. An easement obtained for the purpose of exposure of a solar energy device must be created in writing and is subject to the same recording requirements as any other easements on real property. He gave some details and statistics on cost of solar energy. He discussed the verticle and horizontal angles, expressed in degrees, at which the easement extends over the property subject to the solar easement.

CHUCK HAMMONS:

I drafted this bill at the request of Ted Doney, of the Department of Natural Resources. I would just like to state that the purpose of the bill is to promote solar energy. In the Senate there was a bill which was killed in committee. This bill we have now is just to grant rights for solar easements.

Representative Roth asked who would give these easements. Mr. Hammons said that an easement is negotiated and would be recorded the same as any other easement.

There was no further discussion and the hearing closed.

HOUSE BILL NO. 877:

Representative Keedy. This bill would exclude the old insanity defense. This bill would bring about a great change. He talked about a persons accountability for their actions. We have a system in Montana now where by virtue of the so-called mental disease defense a person can be confined against his will far longer than if he had been dealt with criminally. They could also be out on the street again virtually overnight. I don't believe any of us would create such a system if we had started from scratch. I think we have been sold a bill of goods in this area. He gave examples of scientifically verifiable data. We bring psychiatrists into these cases as expert witnesses, but psychiatrists are making godly and outrageous statement. Psychiatrists and social workers should be removed from the criminal justice process. Psychiatric determinations are not scientifically verifiable. In 1974 Goldwater was declared paranoid and schizophrenic by psychiatrists. I think if a defendant is charged and acquitted on the ground of mental disease or defect he could not have a particular state of mind that is an essential element of the offense charged, the verdict and the judgment shall so state. I think they are criminals and should be charged as such in our courts. The mental statute we have now was patterned after the Durham rule. The courts are very clear that non-penal treatment makes sense only if people not wanting it do have it. I believe that criminal law should presume that each of us is capable of free choice of behavior. It must be passed upon the offense rather than the offender. My purpose with the bill is to hold people accountable for their criminal acts. If we were to start over would you again want the system that is so obviously turned on its head.

MARGARET OLMSTEAD:

We are basically not proponents or opponents. We would like to recommend rather than pass this issue we would like to recommend that there be a resolution that would set up a study of this issue. We have a recommended resolution, which she passed out to the committee.

TOM HONZEL:

Trial Lawyers Association. We do support this bill. For some time we have needed to abolish the defense of mental disease in criminal law. He mentioned an interview that Mr. Adams had with a psychiatrist from back east. I think Representative Keedy has a better approach than the bill that Senator Towe has. This makes it much more sensible. Trials involving insanity defenses always become "battles of the experts". The focus should be, "did the individual commit the crime"?

REPRESENTATIVE KEEDY:

I wanted to take extreme care with these bills. These were not hastily drafted. Just by way of allaying fears that you may have, I want to say that these bills are the product of considerable time and attention.

After numerous questions the hearing closed on House Bill No. 877.

HOUSE OF REPRESENTATIVES
EXECUTIVE SESSION
JUDICIARY COMMITTEE
February 20, 1979

Following the regular meeting of the Judiciary Committee the members took a short break and then went into executive session to take action on pending bills. The meeting was called to order by Chairman Scully at 10:45 a.m. in room 436 of the Capitol Building on Tuesday, February 20. All members were present except Representative Day, excused to chair the Agriculture Committee.

HOUSE BILL NO. 797:

vote unanimous.

Representative Rosenthal moved "do pass". The motion carried with the

HOUSE BILL NO. 798:

about the rules. It was decided that they could already inspect the jails and the law was not needed. The motion carried with Representative Rosenthal, Kemmis and Uhde voting "no".

Representative Keyser moved "do not pass". There was lengthy discussion

HOUSE BILL NO. 799:

representative Keedy asked for a roll call vote on "do not pass". The motion carried with the vote 10 yes, 6 no and 3 absent.

Representative Rosenthal moved "do pass". The motion failed. Repre-

HOUSE BILL NO. 803:

the need for an amendment. Representative Anderson will offer it on the floor. The question was called and the motion passed with Representative Eudaily voting "no".

Representative Anderson moved "do pass". There was discussion about

HOUSE BILL NO. 812:

a substitute motion, "do not pass". The motion carried with Representatives Kemmis, Pavlovich, Holmes, Teague and Keedy voting "no".

Representative Rosenthal moved "do pass". Representative Seifert moved

HOUSE BILL NO. 836:

unanimous.

Representative Keyser moved "do pass". The motion carried with the vote

HOUSE BILL NO. 820:

unanimous.

Representative Conroy moved "do pass". The motion carried with the vote

HOUSE BILL NO. 746:

vote unanimous.

Representative Eudaily moved "do pass". The motion carried with the

HOUSE BILL NO. 801:

unanimous.

Representative Keyser moved "do pas". The motion carried with the vote

HOUSE BILL NO. 831:

Representative Lory moved "do not pass". He spoke to his motion, I think it is general law put in for one specific instance and I see trouble down the road. The motion carried with Representatives Teague, Curtiss, Conroy and Keyser voting "no".

HOUSE BILL NO. 877:

Representative Conroy moved "do pass". Representative Holmes moved a substitute motion to put it into a study and adopt the resolution presented to the committee which would do this. There was heated discussion and Representative Keyser moved a motion to end all motions that it do not pass. Chairman Scully said this motion would only end any action on the motion to adopt the resolution.

There was heated discussion about whether the bill was constitutional. Representative Kemmis said this could be a question because of the cases that had already been before the Supreme Court.

The motion to adopt the resolution failed with Representatives Holmes, Rosenthal and Eudaily voting yes.

The motion then reverted back to "do pass".

Representative Kemmis apologized for his remark about irresponsibility that had been made during the earlier discussion. He said he did not mean it personally to Representative Keedy, only that the action of not adopting a study was irresponsible.

The question was called and the motion passed with Representatives Holmes Kemmis and Lory voting "no". Representative Rosenthal asked to be recorded as abstaining.

HOUSE BILL NO. 878:

Representative Daily moved "do not pass". The motion carried on a roll call vote of 10 to 6.

HOUSE BILL NO. 732:

Representative Scully read information that had been given to him by the sponsor, Representative Harper, about airport maintenance and airport influence areas. Representative Kemmis moved to amend page 2, line 2, by striking the new language. This will be done from the floor. The motion carried with the vote unanimous. He then moved "do pass" and the motion carried with Representatives Curtiss and Seifert voting

There was no further business and the meeting adjourned at 11:30 a.m.

FOURTY-SIXTH LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY-SENATE

<u>House</u>	ENTERED	DATE	OUT OF	DO PASS	DO NOT	DO PASS	BE CON-	BE CONC. IN	BE NOT COI
BILL NO.	COMM.	CONSIDERED	COMM.	<u>DATE</u>	PASS <u>DATE</u>	AS AMEND. <u>DATE</u>	CURRED IN <u>DATE</u>	AS AMENDED <u>DATE</u>	CURRED IN <u>DATE</u>
97. HB- 860	2/28/79	3/19/79	3/20/79					3/19/79	
98. HB- 865	2/28/79	3/17/79	3/20/79						3/19/79
99. HB- 870	2/28/79	3/19/79	3/20/79					3/19/79	
100. HB- 877	2/28/79	3/19/79	Tabled 3/19/79					3/21/79	
101. HB- 879	2/28/79	3/13/79	Transferred 3/13/79						
102. HJR- 2	1/18/79	1/26/79	1/26/79					1/26/79	
103. HJR- 44	3/23/79	3/29/79	3/30/79					3/29/79	
104. HJR- 59	3/31/79	4/5/79	4/5/79					4/5/79	
105. HJR- 65	4/1/79	4/15/79	4/15/79					4/15/79	
106. HJR- 69	4/19/79								

House BILL NO. 877

INTRODUCED BY *Keesy Seiser Conway* *John F. Donaldson*

A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE DEFENSE
OF MENTAL DISEASE OR DEFECT IN CRIMINAL ACTIONS; AMENDING
SECTIONS 46-14-201 THROUGH 46-14-203, 46-14-212, 46-14-213,

46-14-221, 46-14-222, 46-14-301, AND 46-15-301, MCA; AND

REPEALING SECTIONS 46-14-101 AND 46-14-211, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-14-201, MCA, is amended to read:

"46-14-201. ~~Affirmative defense requirement~~

~~Requirement of notice -- form of verdict and judgment. (1)~~
~~Mental disease or defect excluding responsibility is an~~
~~affirmative defense which the defendant must establish by a~~
~~preponderance of the evidence.~~

(1) Evidence of mental disease or defect excluding
responsibility is not admissible in a trial on the merits
unless the defendant, at the time of entering his plea of
not guilty or within 10 days thereafter or at such later
time as the court may for good cause permit, files a written
notice of his purpose to rely on such defenses.

(3) ~~The defendant shall give similar notice when in a~~
~~trial on the merits, he intends to rely on a mental disease~~
or defect to prove that he did not have a particular state

of mind which is an essential element of the offense
charged. Otherwise, except on good cause shown, he shall not
introduce in his case in chief expert testimony in support
of that defense.

(4) (2) When the defendant is acquitted on the ground
of that due to a mental disease or defect excluding
responsibility he could not have a particular state of mind
that is an essential element of the offense charged, the
verdict and the judgment shall so state."

Section 2. Section 46-14-202, MCA, is amended to read:

"46-14-202. Psychiatric examination of defendant. (1)
When ~~the defendant has filed a notice of intention to rely~~
~~on the defense of mental disease or defect excluding~~
responsibility ~~or~~ there is reason to doubt his the
defendant's fitness to proceed or reason to believe that
mental disease or defect of the defendant will otherwise
become an issue in the cause, the court shall appoint at
least one qualified psychiatrist or shall request the
superintendent of Warm Springs state hospital to designate
at least one qualified psychiatrist, which designation may
be or include himself, to examine and report upon the mental
condition of the defendant.

(2) The court may order the defendant to be committed
to a hospital or other suitable facility for the purpose of
the examination for a period of not exceeding 60 days or

1 such longer period as the court determines to be necessary
2 for the purpose and may direct that a qualified psychiatrist
3 retained by the defendant be permitted to witness and
4 participate in the examination.

5 (3) In the examination any method may be employed
6 which is accepted by the medical profession for the
7 examination of those alleged to be suffering from mental
8 disease or defect."

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11 of the examination shall include the following:

12 (a) a description of the nature of the examination;

13 (b) a diagnosis of the mental condition of the
14 defendant;

15 (c) if the defendant suffers from a mental disease or
16 defect, an opinion as to his capacity to understand the
17 proceedings against him and to assist in his own defense;
18 and

19 ~~(d) when a notice of intention to rely on the defense~~
20 ~~of irresponsibility has been filed, an opinion as to the~~
21 ~~ability of the defendant to appreciate the criminality of~~
22 ~~his conduct or to conform his conduct to the requirements of~~
23 ~~law at the time of the criminal conduct charged; and~~

24 ~~(e)(d)~~ when directed by the court, an opinion as to
25 the capacity of the defendant to have a particular state of

1 mind which is an element of the offense charged.

2 (2) If the examination cannot be conducted by reason
3 of the unwillingness of the defendant to participate
4 therein, the report shall so state and shall include, if
5 possible, an opinion as to whether the unwillingness of the
6 defendant was the result of mental disease or defect.

7 (3) The report of the examination shall be filed in
8 triplicate with the clerk of court, who shall deliver copies
9 to the county attorney and to counsel for the defendant."

10 Section 4. Section 46-14-212, MCA, is amended to read:

11 "46-14-212. Examination by psychiatrist chosen by
12 state or defendant. If either the defendant or the state
13 wishes the defendant to be examined by a qualified
14 psychiatrist or other expert selected by the one proposing
15 the examination in order to determine the defendant's
16 fitness to proceed or whether he had, at the time the
17 offense was committed, a particular state of mind which is
18 an essential element of the offense, the examiner shall be
19 permitted to have reasonable access to the defendant for the
20 purpose of the examination."

21 Section 5. Section 46-14-213, MCA, is amended to read:

22 "46-14-213. Psychiatric testimony upon trial. (1) Upon
23 the trial, any psychiatrist who reported under 46-14-202 and
24 46-14-203 may be called as a witness by the prosecution or
25 by the defense. If the issue is being tried before a jury,

1 the jury may not be informed that the psychiatrist was
 2 designated by the court or by the superintendent of Warm
 3 Springs state hospital. Both the prosecution and the
 4 defense may summon any other qualified psychiatrist or other
 5 expert to testify, but no one who has not examined the
 6 defendant is competent to testify to an expert opinion with
 7 respect to the mental condition or--responsibility of the
 8 defendant, as distinguished from the validity of the
 9 procedure followed by or the general scientific propositions
 10 stated by another witness.

11 (2) When a psychiatrist or other expert who has
 12 examined the defendant testifies concerning the defendant's
 13 mental condition, he may make a statement as to the nature
 14 of his examination, his diagnosis of the mental condition of
 15 the defendant at the time of the commission of the offense
 16 charged, and his opinion as to the ability of the defendant
 17 to appreciate-the-criminativity-of-his-conduct-to-conform-his
 18 conduct--to-the-requirements-of-law-or-to have a particular
 19 state of mind which is an element of the offense charged.
 20 The expert may make any explanation reasonably serving to
 21 clarify his diagnosis and opinion and may be cross-examined
 22 as to any matter bearing on his competency or credibility or
 23 the validity of his diagnosis or opinion."

24 Section 6. Section 46-14-221, MCA, is amended to read:

25 "46-14-221. Determination of fitness to proceed --

1 effect of finding of unfitness -- expenses. (1) The issue of
 2 the defendant's fitness to proceed may only be raised by the
 3 defendant with the advice of counsel. When the defendant's
 4 fitness--to--proceed issue is drawn-in-question raised, the
 5 issue it shall be determined by the court. If neither the
 6 county attorney nor counsel for the defendant contests the
 7 finding of the report filed under 46-14-203, the court may
 8 make the determination on the basis of the report. If the
 9 finding is contested, the court shall hold a hearing on the
 10 issue. If the report is received in evidence upon the
 11 hearing, the parties have the right to summon and
 12 cross-examine the psychiatrists who joined in the report and
 13 to offer evidence upon the issue.

14 (2) If the court determines that the defendant lacks
 15 fitness to proceed, the proceeding against him shall be
 16 suspended, except as provided in subsection (4) of this
 17 section, and the court shall commit him to the custody of
 18 the director of the department of institutions to be placed
 19 in an appropriate institution of the department of
 20 institutions for so long as the unfitness endures.

21 (3) If the court determines that the defendant lacks
 22 fitness to proceed due to the fact that the person is
 23 developmentally disabled, as defined by 53-20-102, the
 24 proceeding against him shall be suspended, except as
 25 provided in subsection (4) of this section, and the court

1 shall proceed to secure treatment as provided in chapter 20,
2 part 1, or chapter 21, part 1, of Title 53.

3 (4) The fact that the defendant is unfit to proceed
4 does not preclude any legal objection to the prosecution
5 which is susceptible to fair determination prior to trial
6 and without the personal participation of the defendant.

7 (5) The expenses of sending the defendant to the
8 custody of the director of the department of institutions to
9 be placed in an appropriate institution of the state
10 department of institutions, of keeping him there, and of
11 bringing him back are in the first instance chargeable to
12 the county in which the indictment was found or the
13 information filed; but the county may recover them from the
14 estate of the defendant, if he has any, or from a town,
15 city, or county bound to provide for and maintain him
16 elsewhere."

17 Section 7. Section 46-14-222, MCA, is amended to read:

18 "46-14-222. Proceedings if fitness regained. When the
19 court, on its own motion or upon the application of the
20 director of the department of institutions, the county
21 attorney, or the defendant or his legal representative,
22 determines, after a hearing if a hearing is requested, that
23 the defendant has regained fitness to proceed, the
24 proceeding shall be resumed. If, however, the court is of
25 the view that so much time has elapsed since the commitment

1 of the defendant that it would be unjust to resume the
2 criminal proceedings, the court may dismiss the charge and
3 may order the defendant to be discharged or, subject to the
4 law governing the civil commitment of persons suffering from
5 ~~serious mental disease--or--defect illness~~, order the
6 defendant committed to an appropriate institution of the
7 department of institutions."

8 Section 8. Section 46-14-301, MCA, is amended to read:

9 "46-14-301. Commitment upon acquittal on the ground of
10 ~~irresponsibility lack of mental state~~ -- hearing to
11 determine release or discharge. (1) When a defendant is
12 acquitted on the ground of ~~that due to a mental disease or~~
13 ~~defect excluding--responsibility he could not have a~~
14 ~~particular state of mind that is an essential element of the~~
15 ~~offense charged~~, the court shall order him committed to the
16 custody of the superintendent of Warm Springs state hospital
17 to be placed in an appropriate institution for custody,
18 care, and treatment.

19 (2) A person so confined shall have a hearing, unless
20 waived, within 50 days of his confinement to determine his
21 present mental condition and whether he may be discharged or
22 released without danger to others. The court shall cause
23 notice of the hearing to be served upon the person, his
24 counsel, and the prosecuting attorney. Such a hearing shall
25 be deemed a civil proceeding, and the burden shall be upon

1 the defendant to prove by a preponderance of the evidence
2 that he may be safely released.

3 (3) According to the determination of the court upon
4 the hearing, the defendant shall be discharged or released
5 on such conditions as the court determines to be necessary
6 or shall be committed to the custody of the superintendent
7 of the Warm Springs state hospital to be placed in an
8 appropriate institution for custody, care, and treatment."

9 Section 9. Section 46-15-301, MCA, is amended to read:

10 "46-15-301. Discovery of witnesses; notice of certain
11 defenses. In all criminal cases originally triable in
12 district court the following rules apply:

13 (1) For the purpose of notice only and to prevent
14 surprise, the prosecution shall furnish to the defendant and
15 file with the clerk of the court at the time of arraignment
16 a list of the witnesses the prosecution intends to call. The
17 prosecution may, any time after arraignment, add to the list
18 the names of any additional witnesses upon a showing of good
19 cause. The list shall include the names and addresses of the
20 witnesses. This subsection does not apply to rebuttal
21 witnesses.

22 (2) (a) For purpose of notice only and to prevent
23 surprise, the defendant shall furnish to the prosecution and
24 file with the clerk of the court, at the time of entering
25 his plea of not guilty or within 10 days thereafter or at

1 such later time as the court may for good cause permit, a
2 statement of intention to interpose the defense of mental
3 disease--or--defect, self-defense or alibi or the defense
4 that the defendant did not have a particular state of mind
5 that is an essential element of the offense charged.

6 (b) If the defendant intends to interpose any of these
7 defenses, he shall also furnish to the prosecution and file
8 with the clerk of the court the names and addresses of all
9 witnesses to be called by the defense in support thereof.
10 Prior to trial the defendant may, upon motion and showing of
11 good cause, add to the list of witnesses the names of any
12 additional witnesses. After the trial commences, no
13 witnesses may be called by the defendant in support of these
14 defenses unless the name of the witness is included on the
15 list, except upon good cause shown."

16 Section 10. Repealer. Sections 46-14-101 and
17 46-14-211, MCA, are repealed.

-End-

HB 277

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 19, 1979

The sixty-third meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink, Chairman on the above date in room 331 of the capitol building at 9:35 a.m.

ROLL CALL:

All members were present.

FINAL DISPOSITION OF HOUSE BILL 438:

Joan Mayer from the Legislative Council and attorney for the committee presented the amendments to this bill, and requested the committee to look over this amendment as she had changed the language somewhat. Senator Towe made a motion that we adopt the language as offered by Ms. Mayer. The motion carried unanimously. The bill had previously been voted to be concurred in as amended.

FINAL DISPOSITION OF HOUSE BILL 836:

This bill is an act defining the responsibility and liability of ski area operators and the responsibility and risk borne by skiers. Joan Mayer, attorney for the Legislative Council, stated that she had added an amendment on page 1, lines 24 and 25, where it says, "does not include the use of an aerial passenger tramway", that she changed it to say "a person using" an aerial passenger tramway.

Senator Towe moved that without objection this amendment be adopted. There was no objection.

Joan Mayer also stated that on page 2, line 25, she had reworded the material to read, "However, nothing in this section relieves an operator from the duty of taking whatever other actions are necessary to properly construct, operate, maintain and repair a passenger tramway." Senator Towe moved that this amendment be adopted without objection. There was no objection.

RECONSIDERATION OF ACTION ON HOUSE BILL 787 and HOUSE BILL 788

Joan Mayer from the Legislative Council stated that there were two amendments that were made on House Bill 788 that were not put on House Bill 787 and she wanted to make sure that the committee did not want them. She said that in section 14, did they want this on House Bill 787 also.

that they said the old law was unconstitutional because of the right of access to the courts plus she thinks she could say that in section 7, it says that in libel actions you can go to the court and get defense.

Senator Van Valkenburg stated that the old law says you can not initiate an action and under this law, this says you can initiate an action.

Senator Towe commented that they can't start an action first without an opportunity to retract.

There was considerable discussion of the old law versus the new law.

Senator Towe commented that he liked the part of the statute that deals with retraction and Senator Olson questioned if they give the same space in the retraction as they do when they made the report. Joan Mayer stated that on page 3 it says that there must be a correction timely published or broadcast without comment in a position and type as prominent as the alleged libel or in a broadcast made at the same time of day as the broadcast complained of and of at least equal duration.

Senator Towe moved that the bill be concurred in, as amended. The motion carried with Senators Brown and Van Valkenburg voting no.

DISPOSITION OF HOUSE BILL 877:

This bill is an act to abolish the defense of mental disease or defect in criminal actions and this bill was sponsored by Representative Keedy. Senator Towe had sponsored a similar bill, which is Senate Bill 495. Senator Towe explained that his bill, Senate Bill 495, is now in the House, it was placed in a subcommittee, which came back with a do not pass and the subcommittee recommended making a study on the matter but the subcommittee's report has not been adopted by the whole committee.

Senator O'Hara wondered about placing a heavy burden on Warm Springs. Senator Towe stated that these people are going there now. They feel that, they would give an indeterminate sentence and once they are cured, they shouldn't spend any more time at Warm Springs than they do now; and he said that he doesn't know if the present situation works any better than he suggests but he feels that this way gives a far better approach.

He further stated that a person who did something wrong intended to do it, but he may have thought what he did was not criminal; and that they are going to take that into consideration when sentencing.

Senator Turnage questioned about shop lifting and Senator Towe said it would be the same thing if someone is a kleptomaniac, he would be tried for the act, but then this would be taken into consideration at the time of sentencing, and under present law, he doesn't have a trial.

Senator Van Valkenburg stated that he does have a trial, but is found not guilty by reason of mental disease or defect.

Senator Lensink said that being Senator Towe prefers his bill and that this committee passed that bill, that maybe a nice way of handling the matter would be to table this one.

Senator Brown moved that the bill be tabled.

Senator Towe said that the only other alternative that he would suggest would be that we amend this bill to say basically what the other bill says. He stated that he talked to Mr. Keedy and he told him that he would not be able to support his bill unless it had these amendments on it.

Senator Olson questioned if the courts recognize temporary insanity and Senator Turnage replied that it is pretty much abrogated by the new criminal code.

Senator Brown stated that he would renew his motion that this bill be tabled. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 870:

This is an act to provide that the existence of a mental state necessary for commission of a criminal offense may be inferred from the acts of the accused and the facts and circumstances connected with the offense and to provide that defenses relating to a lack of the required mental state must be proved by the defendant by a preponderance of the evidence.

There was some discussion on the merits of this bill. Senator Van Valkenburg moved to amend the bill by striking all the new language on page 3, lines 4 and 5, and to further amend on page 1, line 8, following "and" by striking all the

Date 2/18/79

ROLL CALL

JUDICIARY COMMITTEE - Work Session

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
March 21, 1979

The sixty-fifth meeting of the Senate Judiciary Committee was called to order by Everett R. Lensink, Chairman on the above date in room 331 of the capitol building at 10:30 a.m.

ROLL CALL:

All members were present with the exception of Senator Galt, who was excused.

DISPOSITION OF HOUSE BILL 338:

Joan Mayer, attorney for the Legislative Council, passed out suggested amendments to this bill. (See Exhibit A.)

Senator Turnage referred to the Ray Marshall vs. Barlow's, Inc. case. (See Exhibit B.) He quoted the underscored areas on page 3029 and 3030 and stated that the point of all that is that people's privacy is too precious and that in this bill, we are going to deny that precious privacy right.

Senator Towe then quoted from page 3033 from the aforementioned decision. (See underscored.)

Senator Lensink then stated he felt that the heart of the decision was on page 3032, which states, "Whether the Secretary proceeds to secure a warrant or other process, with or without prior notice, his entitlement to inspect will not depend on his demonstrating probable cause to believe that conditions in violation of OSHA exist on the premises. Probable cause in the criminal law sense is not required. For purposes of an administrative search such as this, probable cause justifying the issuance of a warrant may be based not only on specific evidence of an existing violation but also on a showing that "reasonable legislative or administrative standards for conducting an inspection are satisfied with respect to a particular (establishment)."

Senator Lensink commented that the decision to him lowered the standards of obtaining a warrant.

Senator Towe stated that we have to show probable cause, which is tough and Senator Turnage asked why it shouldn't be tough - that invading someone's business should be tough. Senator Van Valkenburg commented that the privacy of a business is different from raiding someone's home and felt that they should have some authority to see if the law is being followed.

Senator Lensink commented that he did not see any apparent difficulty at the present time because of the supreme court decision and that the bill is kind of a preventive medicine type thing because someone sees there may be something in the future. Senator Van Valkenburg said that he did not see this at all and the problem is there now and is growing.

It was noted that the problem is not acute at this point, but the department of administration has been denied access to some building sites, that there were some who testified at the hearing on other cases; and the problem in Missoula with the zoning ordinance where there was reason to believe that a group of people were living in a single-family dwelling in violation of an ordinance passed by the city was cited.

Senator Turnage moved that this bill be not concurred in. There were six votes yes and four no. (See Roll Call Vote.)

DISPOSITION OF HOUSE BILL 774:

The committee discussed the handling of the majority and minority reports in connection with this bill and it was agreed by the committee that the best way to handle this bill was to move to place it on second reading. All the members agreed.

RECONSIDERATION OF HOUSE BILL 877:

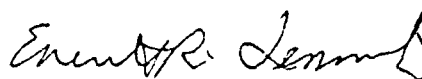
Senator Towe noted that the committee had earlier tabled this bill and also that the House Judiciary Committee had tabled Senate Bill 495, which was essentially the same type of bill and which Senator Towe had sponsored. He explained that he would like to get one of these bills out and he moved that House Bill 877 be removed from the table. The motion carried with all voting yes, except Senator Van Valkenburg, who voted no.

DISPOSITION OF HOUSE BILL 877:

Senator Towe moved that the provisions in Senate Bill 495 relating to the sentencing procedure in mental disease and defect be amended into House Bill 877. The motion carried unanimously. Senator Towe moved that House Bill 877 as so amended, be concurred in. The motion carried with Senators Lensink and Van Valkenburg voting no.

Minutes - March 21, 1979
Senate Judiciary Committee
Page Five

There being no further business, the meeting adjourned.

A handwritten signature in cursive script, reading "Everett R. Lensink".

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date 3/21/79

ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)			✓
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

HB 877

1. Title, line 5.

Following: "ACTIONS"

Insert: "AND TO PROVIDE AN ALTERNATIVE
SENTENCING PROCEDURE TO BE FOLLOWED
WHEN A CONVICTED DEFENDANT IS FOUND
TO HAVE BEEN SUFFERING FROM A MENTAL
DISEASE OR DEFECT AT THE TIME OF
THE COMMISSION OF THE OFFENSE OF
WHICH HE WAS CONVICTED"

2. Title, line 6.

Following: "SECTIONS"

Insert: "46-14-101,"

Following: "46-14-203,"

Strike: "46-14-212,"

Following: } 3. Title, line 7.
"6-14-222," }

Strike: "46-14-301"

Insert: "46-14-401"

4. Title, line 8.

Following: "SECTIONS"

Strike: "46-14-101 AND"

Following: "46-14-211"

Insert: "AND 46-14-301 THROUGH 46-14-304"

5. Page 1.

Following: line 15

Insert: "Section 1. Section 46-14-101, MCA, is amended to read

"46-14-101. Mental disease or defect excluding responsibility. (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he is unable either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law

(2) As used in this chapter, the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or other antisocial conduct.")

Remember: all subsequent sections

6. Page 4, lines 10 through 20.

Strike: section 4 in its entirety

Remember: all subsequent sections

7. Page 8, line 8 through line 8 on page 9.

Strike: section 8 in its entirety

Remember: all subsequent sections

HB 877

Following: 46-14-301
Insert: 46-14-401

8. Page 9.

Following: line 8

Insert: ~~NEW SECTION~~ Section ~~8~~^{8.} Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict or a plea of guilty and he claims that at the time of the commission of the offense of which he was convicted he was unable as a result of mental disease ~~or~~ defect either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, the sentencing court shall consider evidence obtained as provided in 46-14-202 and 46-14-203 and any other relevant evidence presented at the trial and shall require such additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report thereof as provided in 46-14-202 and 46-14-203.

~~NEW SECTION~~ Section ~~13~~⁸. Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in [section 8], it shall sentence him as provided in Title 46, chapter 18.

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in [section 8], any mandatory minimum sentence prescribed by law for the offense does not apply and the court shall sentence him to:

(a) be committed to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment for a period not to exceed the maximum term of imprisonment that could be imposed under subsection (1); or

(b) undergo for such a period any other appropriate course of treatment that is accepted by the medical profession and that will not present a danger to the public.

(3) If the court sentences the defendant under subsection (2)(a), it may provide that the professional person in charge of the institution in which the defendant is placed may release the defendant on condition after a specified period of time that is less than his period of commitment if the professional person determines that the defendant has been cured of the mental disease or defect found by the court and is no longer a danger to himself or others. If the professional person releases the defendant pursuant to this subsection, he shall report the release and the conditions placed on it to the court.

normal capitalization, no underlining

(4) A DEFENDANT WHOSE DISPOSITION OR SENTENCE DOES NOT ALLOW FOR CONDITIONAL RELEASE BY THE PROFESSIONAL PERSON IN CHARGE OF THE INSTITUTION, AS PROVIDED IN SUBSECTION (3), MAY PETITION THE SENTENCING COURT FOR REVIEW OF THE SENTENCE IF THE PROFESSIONAL PERSON CERTIFIES THAT THE DEFENDANT HAS BEEN CURED OF THE MENTAL DISEASE OR DEFECT. THE SENTENCING COURT MAY MAKE ANY ORDER NOT INCONSISTENT WITH ITS ORIGINAL SENTENCING AUTHORITY EXCEPT THAT THE LENGTH OF CONFINEMENT OR SUPERVISION MAY NOT BE INCREASED. THE PROFESSIONAL PERSON SHALL REVIEW THE DEFENDANT'S STATUS EACH YEAR.

NEW SECTION. Section 10. Recommitment after conditional release. If before the expiration of the period of commitment the court determines after hearing evidence that a defendant who has been released under [section 9(3)] has not fulfilled the conditions of his release and that for his own safety or the safety of others his conditional release should be revoked, the court shall immediately order him to be recommitted to the custody of the superintendent of Warm Springs state hospital to be placed in the same or another appropriate institution for custody, care, and treatment.

NEW SECTION. Section 11. Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under [section 9(2)], the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

Section ~~12~~. Section 46-14-401, MCA, is amended to read:

"46-14-401. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric examination or treatment provided for in this chapter by a person subjected to such examination or treatment is not admissible in evidence against him in any criminal proceeding, except a sentencing hearing conducted under [section 8] or a hearing on commitment conducted under [section 10], on any issue other than that of his mental condition. It is admissible on the issue of his mental condition, whether or not it would otherwise be considered a privileged communication, unless it constitutes an admission of guilt of the crime charged. In a hearing held under [section 8] or [section 10], the court may hear and consider any such statement even if it constitutes an admission of guilt."

Remember: all subsequent sections

9. Page 10, line 16.

Strike: "46-14-101 and"

10. Page 10, line 17.

Following: "46-14-211"

Insert: "and 46-14-301 through 46-14-304"

March 22, 1979

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 877, third reading bill, be amended as follows:

1. Title, line 5.

Following: "ACTIONS"

Insert: "AND TO PROVIDE AN ALTERNATIVE SENTENCING PROCEDURE TO BE FOLLOWED WHEN A CONVICTED DEFENDANT IS FOUND TO HAVE BEEN SUFFERING FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE COMMISSION OF THE OFFENSE OF WHICH HE WAS CONFLICTED"

2. Title, line 6.

Following: "SECTIONS"

Insert: "46-14-101,"

Following: "46-14-203,"

Strike: "46-14-212,"

3. Title, line 7.

Following: "46-14-222,"

Strike: "46-14-301"

Insert: "46-14-401"

4. Title, line 8.

Following: "SECTIONS"

Strike: "46-14-101 AND"

Following: "46-14-211"

Insert: "AND 46-14-301 THROUGH 46-14-304"

5. Page 1, line 11.

Following: line 10

Insert: "Section 1. Section 46-14-101, MCA, IS AMENDED TO READ:

"46-14-101. Mental disease or defect ~~excluding-responsibility.~~

~~{1}--A-person-is-not-responsible-for-criminal-conduct-if-at-the time-of-such-conduct-as-a-result-of-mental-disease-or-defect he-is-unable-either-to-appreciate-the-criminality-of-his-conduct or-to-conform-his-conduct-to-the-requirements-of-law-~~

~~{2}~~ As used in this chapter, the term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or other antisocial conduct.""

Renumber: subsequent sections

6. Page 4, lines 10 through 20.

Strike: section 4 in its entirety

Renumber: subsequent sections

7. Page 8, line 8 through line 8 on page 9.

Strike: section 8 in its entirety

Renumber: subsequent sections

8. Page 9.

Following: line 8

Insert: "Section 8. THERE IS A NEW MCA SECTION THAT READS:

Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict or a plea of guilty and he claims that at the time of the commission of the offense of which

he was convicted he was unable as a result of mental disease or defect either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, the sentencing court shall consider evidence obtained as provided in 46-14-202 and 46-14-203 and any other relevant evidence presented at the trial and shall require such additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report thereof as provided in 46-14-202 and 46-14-203.

Section 9. THERE IS A NEW MCA SECTION THAT READS:
Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in [section 8], it shall sentence him as provided in Title 46, chapter 18
(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in [section 8], any mandatory minimum sentence prescribed by law for the offense does not apply and the court shall sentence him to:
(a) be committed to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment for a period not to exceed the maximum term of imprisonment that could be imposed under subsection (1); or
(b) undergo for such a period any other appropriate course of treatment that is accepted by the medical profession and that will not present a danger to the public.
(3) If the court sentences the defendant under subsection (2)(a), it may provide that the professional person in charge of the institution in which the defendant is placed may release the defendant on condition after a specified period of time that is less than his period of commitment if the professional person determines that the defendant has been cured of the mental disease or defect found by the court and is no longer a danger to himself or others. If the professional person releases the defendant pursuant to this subsection, he shall report the release and the conditions placed on it to the court.
(4) A defendant whose disposition or sentence does not allow for conditional release by the professional person in charge of the institution, as provided in subsection (3), may petition the sentencing court for review of the sentence if the professional person certifies that the defendant has been cured of the mental disease or defect. The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision may not be increased. -The professional person shall review the defendant's status each year.

Section 10. THERE IS A NEW MCA SECTION THAT READS:
Recommitment after conditional release. If before the expiration of the period of commitment the court determines after hearing evidence that a defendant who has been released under [section 9(3)] has not fulfilled the conditions of his release and that for his own safety or the safety of others his conditional release should be revoked, the court shall immediately order him to be recommitted to the custody of the superintendent of Warm Springs state hospital to be placed in the same or another appropriate institution for custody, care, and treatment.

Section 11. THERE IS A NEW MCA SECTION THAT READS:
Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under [section 9(2)], the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

Section 12. Section 46-14-401, MCA, IS AMENDED TO READ:
"46-14-401. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric examination or treatment provided for in this chapter by a person subjected to such examination or treatment is not admissible in evidence against him in any criminal proceeding, except a sentencing hearing conducted under [section 8] or a hearing on recommitment conducted under [section 10], on any issue other than that of his mental condition. It is admissible on the issue of his mental condition, whether or not it would otherwise be considered a privileged communication, unless it constitutes an admission of guilt of the crime charged. In a hearing held under [section 8] or [section 10], the court may hear and consider any such statement even if it constitutes an admission of guilt."
number: all subsequent sections

Page 10, line 16.
Strike: "46-14-101 and"

Page 10, line 17.
Following: "46-14-211"
Insert: "and 46-14-301 through 46-14-304"

March 26, 1979

SENATE COMMITTEE OF THE WHOLE

That House Bill No. 877, third reading bill, be amended as follows:

1. Amendment No. 3 is amended to read
Title, line 7.

Following: "46-14-301"

Insert: "46-14-401"

2. Amendment No. 4 is amended to read
Title, line 8.

Following: "REPEALING"

Strike: "SECTIONS 46-14-101 AND"

Insert: "SECTION"

3. Amendment No. 7 is stricken in its entirety
Renumber: subsequent sections

4. Amendment No. 8 is amended to read
Page 9.

Following: line 8

Insert: "Section 9. THERE IS A NEW MCA SECTION THAT READS:

Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict or a plea of guilty and he claims that at the time of the commission of the offense of which he was convicted he was unable as a result of mental disease or defect either which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, the sentencing court shall consider ~~evidence-obtained-as-provided-in-46-14-202-and 46-14-203-and~~ any other relevant evidence presented at the trial and shall require such additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report thereof as provided in 46-14-202 and 46-14-203.

Section 10. THERE IS A NEW MCA SECTION THAT READS:

Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in

[section 8], it shall sentence him as provided in Title 46, chapter 18

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in [section 8], any mandatory minimum sentence prescribed by law for the offense ~~does~~ need not apply and the court shall sentence him to:

(a) be committed to the custody of the ~~superintendent-of-Warm-Springs-state-hospital~~ director of the department of institutions

to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1); or

(b) undergo for such a period any other appropriate course of treatment that is accepted by the medical profession and that will not present a danger to the public.

~~(3) -- If the court sentences the defendant under subsection (2) (a), it may provide that the professional person in charge of the institution in which the defendant is placed may release the defendant on condition after a specified period of time that is less than his period of com-~~

~~mitment-if-the-professional-person-determines-that-the-defendant-has been-cured-of-the-mental-disease-or-defect-found-by-the-court-and-is-no longer-a-danger-to-himself-or-others---If-the-professional-person releases-the-defendant-pursuant-to-this-subsection, he-shall-report-the release-and-the-conditions-placed-on-it-to-the-court:~~

~~{4}~~ (3) A defendant whose disposition or sentence does not allow for conditional release by the professional person in charge of the institution, as provided in subsection {3}, whose sentence has been imposed under [Section 10 (2)a], may petition the sentencing court for review of the sentence if the professional person certifies that the defendant has been cured of the mental disease or defect. The sentencing court may make any order not inconsistent with its original sentencing authority except that the length of confinement or supervision ~~may-not-be-increased~~ must be equal to that of the original sentence. The professional person shall review the defendant's status each year.

~~Section-10---THERE-IS-A-NEW-MCA-SECTION-THAT-READS:
Recommitment-after-conditional-release---If-before-the-expiration of-the-period-of-commitment-the-court-determines-after-hearing evidence-that-a-defendant-who-has-been-released-under-{section-9-10-{3}} has-not-fulfilled-the-conditions-of-his-release-and-that-for-his-own safety-or-the-safety-of-others-his-conditional-release-should-be revoked, the-court-shall-immediately-order-him-to-be-recommitted-to-- the-custody-of-the-superintendent-of-Warm-Springs-state-hospital-to be-placed-in-the-same-or-another-appropriate-institution-for-custody, care, and-treatment:~~

Section 11. THERE IS A NEW MCA SECTION THAT READS:
Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under [section 910 (2)], the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

Section 12. Section 46-14-401, MCA, IS AMENDED TO READ:
"46-14-401. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric examination or treatment provided for in this chapter by a person subjected to such examination or treatment is not admissible in evidence against him in any criminal proceeding, except a sentencing hearing conducted under [section 89] or a hearing on recommitment conducted under [section 10 11], on any issue other than that of his mental condition. It is admissible on the issue of his mental condition, whether or not it would otherwise be considered a privileged communication, unless it constitutes an admission of guilt of the crime charged. In a hearing held under [section 89] or [section 10 11], the court may hear and consider any such statement even if it constitutes an admission of guilt."

Renumber: all subsequent sections

5. Amendment No. 9 is amended to read

Page 10, lines 16 and 17

Strike: "Sections 46-14-101 and 46-14-211, MCA are repealed"

Insert: "Section 46-14-211, MCA is repealed"

March 27, 1979

SENATE COMMITTEE OF THE WHOLE

That House Bill No. 877, third reading bill, be amended as follows:

1. Amendment No. 8 is amended to read
Page 9.

Following: line 8

Insert: "Section 9. THERE IS A NEW MCA SECTION THAT READS:

Consideration of mental disease or defect in sentencing. Whenever a defendant is convicted on a verdict or a plea of guilty and he claims that at the time of the commission of the offense of which he was convicted he was ~~unable-as-a-result-of~~ suffering from a mental disease or defect ~~either~~ which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law, the sentencing court shall consider ~~evidence-obtained-as-provided-in-46-14-202 and-46-14-203-and~~ any other relevant evidence presented at the trial and shall require such additional evidence as it considers necessary for the determination of the issue, including examination of the defendant and a report thereof as provided in 46-14-202 and 46-14-203."

Section 10. THERE IS A NEW MCA SECTION THAT READS:

Sentence to be imposed. (1) If the court finds that the defendant at the time of the commission of the offense of which he was convicted did not suffer from a mental disease or defect as described in [section 89], it shall sentence him as provided in Title 46, chapter 18 (2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or defect as described in [section 89], any mandatory minimum sentence prescribed by law for the offense ~~does~~ need not apply and the court shall sentence him to: (a) be committed to the custody of the ~~superintendent-of Warm-Springs-state-hospital~~ director of the department of institutions to be placed in an appropriate institution for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1); or (b) undergo for such a period any other appropriate course of treatment that is accepted by the medical profession and that will not present a danger to the public.

~~{3}--If-the-court-sentences-the-defendant-under-subsection-(2)-(a)--it may-provide-that-the-professional-person-in-charge-of-the-institution in-which-the-defendant-is-placed-may-release-the-defendant-on-condition after-a-specified-period-of-time-that-is-less-than-his-period-of-com- mitment-if-the-professional-person-determines-that-the-defendant-has been-cured-of-the-mental-disease-or-defect-found-by-the-court-and-is-no longer-a-danger-to-himself-or-others---If-the-professional-person releases-the-defendant-pursuant-to-this-subsection, he-shall-report-the release-and-the-conditions-placed-on-it-to-the-court.~~

~~{4}~~ (3) A defendant whose disposition or sentence does not allow for conditional release by the professional person in charge of the institution, as provided in subsection (3), whose sentence has been imposed under [Section 10 (2)a], may petition the sentencing court for review of the sentence if the professional person certifies that the defendant has been cured of the mental disease or defect. The sentencing court may make any order not inconsistent with its original

sentencing authority except that the length of confinement or supervision ~~may not be increased~~ must be equal to that of the original sentence. The professional person shall review the defendant's status each year.

Section 10. ~~---THERE IS A NEW MCA SECTION THAT READS:~~
~~Recommitment after conditional release. -- If before the expiration of the period of commitment the court determines after hearing evidence that a defendant who has been released under {section 9-10-(3)} has not fulfilled the conditions of his release and that for his own safety or the safety of others his conditional release should be revoked, the court shall immediately order him to be recommitted to the custody of the superintendent of Warm Springs state hospital to be placed in the same or another appropriate institution for custody, care and treatment.~~

Section 11. THERE IS A NEW MCA SECTION THAT READS:
Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under [section 910 (2)], the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

Section 12. Section 46-14-401, MCA, IS AMENDED TO READ:
46-14-401. Admissibility of statements made during examination or treatment. A statement made for the purposes of psychiatric examination ~~or~~ treatment provided for in this chapter by a person subjected to such examination or treatment is not admissible in evidence against him in any criminal proceeding, except a sentencing hearing conducted under [section 99] or a hearing on recommitment conducted under {section 911}, on any issue other than that of his mental condition. It is admissible on the issue of his mental condition, whether or not it would otherwise be considered a privileged communication, unless it constitutes an admission of guilt of the crime charged. In a hearing held under [section 99] ~~or {section 911}~~, the court may hear and consider any such statement even if it constitutes an admission of guilt."
Renumber: all subsequent sections

HOUSE BILL NO. 877

INTRODUCED BY KEEDY, SEIFERT, CONROY, SCULLY, FABREGA, GOULD,
MAGONE, KANDUCH, NORDTVEDT, MARKS, FAGG, PORTER, C. SMITH,
DONALDSON, FEDA, CURTISS, ELLISON, PISTORIA,
STAIGHMILLER, MANNING, K. ROBBINS, UNDERDAL,
FRATES, SALES, PAVLOVICH, UMDE, DOZIER,
BAETH, MANUEL, HEMSTAD, MEYER, EUDAILY,
DAY, STOBIE, KVAALEN, HAYNE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE DEFENSE
OF MENTAL DISEASE OR DEFECT IN CRIMINAL ACTIONS AND TO
PROVIDE AN ALTERNATIVE SENTENCING PROCEDURE TO BE FOLLOWED
WHEN A CONVICTED DEFENDANT IS FOUND TO HAVE BEEN SUFFERING
FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE
COMMISSION OF THE OFFENSE OF WHICH HE WAS CONVICTED;
AMENDING SECTIONS ~~46-14-101~~, 46-14-201 THROUGH 46-14-203,
~~46-14-212~~, 46-14-213, 46-14-221, 46-14-222, 46-14-301
~~46-14-301~~ ~~46-14-401~~, AND 46-15-301, MCA; AND REPLACING
SECTIONS ~~46-14-101~~ AND SECTION 46-14-211 ~~AND 46-14-301~~
~~THROUGH 46-14-304~~, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION ~~46-14-101~~, MCA, IS AMENDED TO READ:
"46-14-101. Mental disease or defect excluding
responsibility. (1) A person is not responsible for criminal

conduct if at the time of such conduct as a result of mental
disease or defect he is unable either to appreciate the
criminality of his conduct or to conform his conduct to the
requirements of law.

(2) As used in this chapter, the term "mental disease
or defect" does not include an abnormality manifested only
by repeated criminal or other antisocial conduct."

Section 2. Section 46-14-201, MCA, is amended to read:

"46-14-201. Affirmative defense requirement

Requirement of notice -- form of verdict and judgment. (1)
Mental disease or defect excluding responsibility is an
affirmative defense which the defendant must establish by a
preponderance of the evidence.

(2)(1) Evidence of mental disease or defect excluding
responsibility is not admissible in a trial on the merits
unless the defendant, at the time of entering his plea of
not guilty or within 10 days thereafter or at such later
time as the court may for good cause permit, files a written
notice of his purpose to rely on such defense.

(3) The defendant shall give similar notice when, in a
trial on the merits, he intends to rely on a mental disease
or defect to prove that he did not have a particular state
of mind which is an essential element of the offense
charged. Otherwise, except on good cause shown, he shall not
introduce in his case in chief expert testimony in support

1 of that defense.

2 {4}(2) When the defendant is acquitted on the ground
3 of that due to a mental disease or defect excluding
4 responsibility he could not have a particular state of mind
5 that is an essential element of the offense charged, the
6 verdict and the judgment shall so state."

7 Section 3. Section 46-14-202, MCA, is amended to read:

8 "46-14-202. Psychiatric examination of defendant. (1)
9 ~~When the defendant has filed a notice of intention to rely~~
10 ~~on the defense of mental disease or defect excluding~~
11 ~~responsibility or there is reason to doubt his the~~
12 ~~defendant's~~ fitness to proceed or reason to believe that
13 mental disease or defect of the defendant will otherwise
14 become an issue in the cause, the court shall appoint at
15 least one qualified psychiatrist or shall request the
16 superintendent of Warm Springs state hospital to designate
17 at least one qualified psychiatrist, which designation may
18 be or include himself, to examine and report upon the mental
19 condition of the defendant.

20 (2) The court may order the defendant to be committed
21 to a hospital or other suitable facility for the purpose of
22 the examination for a period of not exceeding 60 days or
23 such longer period as the court determines to be necessary
24 for the purpose and may direct that a qualified psychiatrist
25 retained by the defendant be permitted to witness and

1 participate in the examination.

2 (3) In the examination any method may be employed
3 which is accepted by the medical profession for the
4 examination of those alleged to be suffering from mental
5 disease or defect."

6 Section 4. Section 46-14-203, MCA, is amended to read:

7 "46-14-203. Report of the examination. (1) The report
8 of the examination shall include the following:

9 (a) a description of the nature of the examination;

10 (b) a diagnosis of the mental condition of the
11 defendant;

12 (c) if the defendant suffers from a mental disease or
13 defect, an opinion as to his capacity to understand the
14 proceedings against him and to assist in his own defense;
15 and

16 ~~(d) when a notice of intention to rely on the defense~~
17 ~~of irresponsibility has been filed, an opinion as to the~~
18 ~~ability of the defendant to appreciate the criminality of~~
19 ~~his conduct or to conform his conduct to the requirements of~~
20 ~~law at the time of the criminal conduct charged; and~~

21 {e}(d) when directed by the court, an opinion as to
22 the capacity of the defendant to have a particular state of
23 mind which is an element of the offense charged.

24 (2) If the examination cannot be conducted by reason
25 of the unwillingness of the defendant to participate

therein, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(3) The report of the examination shall be filed in triplicate with the clerk of court, who shall deliver copies to the county attorney and to counsel for the defendant."

~~Section 4. Section 46-14-212, MCA, is amended to read:~~

~~"46-14-212. Examination by psychiatrist chosen by state or defendant. If either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or other expert selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether he had at the time the offense was committed a particular state of mind which is an essential element of the offense, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination."~~

Section 5. Section 46-14-213, MCA, is amended to read:

"46-14-213. Psychiatric testimony upon trial. (1) Upon the trial, any psychiatrist who reported under 46-14-202 and 46-14-203 may be called as a witness by the prosecution or by the defense. If the issue is being tried before a jury, the jury may not be informed that the psychiatrist was designated by the court or by the superintendent of Warm Springs state hospital. Both the prosecution and the

defense may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition or responsibility of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist or other expert who has examined the defendant testifies concerning the defendant's mental condition, he may make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to appreciate the criminality of his conduct, to conform his conduct to the requirements of law or to have a particular state of mind which is an element of the offense charged. The expert may make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion."

Section 6. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1) The issue of the defendant's fitness to proceed may only be raised by the defendant with the advice of counsel. When the defendant's

1 fitness-to-proceed ~~issue~~ is drawn-in-question raised, the
 2 ~~issue~~ it shall be determined by the court. If neither the
 3 county attorney nor counsel for the defendant contests the
 4 finding of the report filed under 46-14-203, the court may
 5 make the determination on the basis of the report. If the
 6 finding is contested, the court shall hold a hearing on the
 7 issue. If the report is received in evidence upon the
 8 hearing, the parties have the right to summon and
 9 cross-examine the psychiatrists who joined in the report and
 10 to offer evidence upon the issue.

11 (2) If the court determines that the defendant lacks
 12 fitness to proceed, the proceeding against him shall be
 13 suspended, except as provided in subsection (4) of this
 14 section, and the court shall commit him to the custody of
 15 the director of the department of institutions to be placed
 16 in an appropriate institution of the department of
 17 institutions for so long as the unfitness endures.

18 (3) If the court determines that the defendant lacks
 19 fitness to proceed due to the fact that the person is
 20 developmentally disabled, as defined by 53-20-102, the
 21 proceeding against him shall be suspended, except as
 22 provided in subsection (4) of this section, and the court
 23 shall proceed to secure treatment as provided in chapter 20,
 24 part 1, or chapter 21, part 1, of Title 53.

25 (4) The fact that the defendant is unfit to proceed

1 does not preclude any legal objection to the prosecution
 2 which is susceptible to fair determination prior to trial
 3 and without the personal participation of the defendant.

4 (5) The expenses of sending the defendant to the
 5 custody of the director of the department of institutions to
 6 be placed in an appropriate institution of the state
 7 department of institutions, of keeping him there, and of
 8 bringing him back are in the first instance chargeable to
 9 the county in which the indictment was found or the
 10 information filed; but the county may recover them from the
 11 estate of the defendant, if he has any, or from a town,
 12 city, or county bound to provide for and maintain him
 13 elsewhere."

14 Section 7. Section 46-14-222, MCA, is amended to read:

15 "46-14-222. Proceedings if fitness regained. When the
 16 court, on its own motion or upon the application of the
 17 director of the department of institutions, the county
 18 attorney, or the defendant or his legal representative,
 19 determines, after a hearing if a hearing is requested, that
 20 the defendant has regained fitness to proceed, the
 21 proceeding shall be resumed. If, however, the court is of
 22 the view that so much time has elapsed since the commitment
 23 of the defendant that it would be unjust to resume the
 24 criminal proceedings, the court may dismiss the charge and
 25 may order the defendant to be discharged or, subject to the

law governing the civil commitment of persons suffering from serious mental disease--or--defect illness, order the defendant committed to an appropriate institution of the department of institutions."

Section 14--Section 46-14-301, MCA, is amended to read:

"46-14-301--Commitment upon acquittal on the ground of irresponsibility ~~lack of mental state~~ --- hearing to determine release or discharge. (1) When a defendant is acquitted on the ground of ~~that due to a~~ mental disease or defect --- excluding --- responsibility ~~he could not have a particular state of mind that is an essential element of the offense charged~~, the court shall order him committed to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment.

(2) A person so confined shall have a hearing, unless waived, within 50 days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding, and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released.

(3) According to the determination of the court upon the hearing, the defendant shall be discharged--or--released on--such--conditions as the court determines to be necessary or shall be committed to the custody of the superintendent of the Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment."

SECTION 8. SECTION 46-14-301, MCA, IS AMENDED TO READ:

"46-14-301. Commitment upon acquittal on the ground of irresponsibility lack of mental state -- hearing to determine release or discharge. (1) When a defendant is acquitted on the ground of that due to a mental disease or defect excluding responsibility he could not have a particular state of mind that is an essential element of the offense charged, the court shall order him committed to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment.

(2) A person so confined shall have a hearing, unless waived, within 50 days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding, and the burden shall be upon the defendant to prove by a preponderance of the evidence

1 that he may be safely released.

2 (3) According to the determination of the court upon
3 the hearing, the defendant shall be discharged or released
4 on such conditions as the court determines to be necessary
5 or shall be committed to the custody of the superintendent
6 of the Warm Springs state hospital to be placed in an
7 appropriate institution for custody, care, and treatment."

8 SECTION 9. THERE IS A NEW MCA SECTION THAT READS:

9 Consideration of mental disease or defect in
10 sentencing. Whenever a defendant is convicted on a verdict
11 or a plea of guilty and he claims that at the time of the
12 commission of the offense of which he was convicted he was
13 unable as a result of mental disease or defect either ~~which~~
14 ~~rendered him unable~~ to appreciate the criminality of his
15 conduct or to conform his conduct to the requirements of
16 law, the sentencing court shall consider ~~evidence obtained~~
17 ~~as provided in 46-14-202 and 46-14-203~~ and any other
18 relevant evidence presented at the trial and shall require
19 such additional evidence as it considers necessary for the
20 determination of the issue, including examination of the
21 defendant and a report thereof as provided in 46-14-202 and
22 46-14-203.

23 SECTION 10. THERE IS A NEW MCA SECTION THAT READS:

24 Sentence to be imposed. (1) If the court finds that the
25 defendant at the time of the commission of the offense of

1 which he was convicted did not suffer from a mental disease
2 or defect as described in [section 8], it shall sentence him
3 as provided in Title 46, chapter 18.

4 (2) If the court finds that the defendant at the time
5 of the commission of the offense suffered from a mental
6 disease or defect as described in [section 8], any mandatory
7 minimum sentence prescribed by law for the offense does ~~not~~
8 not apply and the court shall sentence him to:

9 (a) be committed to the custody of the superintendent
10 ~~of Warm Springs state hospital~~ director of the department of
11 institutions to be placed in an appropriate institution for
12 custody, care, and treatment for a ~~definite~~ period not to
13 exceed the maximum term of imprisonment that could be
14 imposed under subsection (1); or

15 (b) undergo for such a period any other appropriate
16 course of treatment that is accepted by the medical
17 profession and that will not present a danger to the public.

18 (3) ~~if the court sentences the defendant under~~
19 ~~subsection (2) it may provide that the professional~~
20 ~~person in charge of the institution in which the defendant~~
21 ~~is placed may release the defendant on condition after a~~
22 ~~specified period of time that is less than his period of~~
23 ~~commitment if the professional person determines that the~~
24 ~~defendant has been cured of the mental disease or defect~~
25 ~~found by the court and is no longer a danger to himself or~~

1 others--if--the--professional--person--releases--the--defendant
2 pursuant--to--this--subsection--he--shall--report--the--release--and
3 the--conditions--placed--on--it--to--the--court--

4 {4}11 A defendant whose disposition or sentence--does
5 not--allow--for--conditional--release--by--the--professional--person
6 in--charge--of--the--institution--as--provided--in--subsection--{3}--
7 whose sentence has been imposed under [section 10(2)(a)]
8 may petition the sentencing court for review of the sentence
9 if the professional person certifies that the defendant has
10 been cured of the mental disease or defect. The sentencing
11 court may make any order not inconsistent with its original
12 sentencing authority except that the length of confinement
13 or supervision may not be increased must be equal to that of
14 the original sentence. The professional person shall review
15 the defendant's status each year.

16 SECTION 10--THERE IS A NEW MCA SECTION THAT READS:

17 Recommitment--after--conditional--release--if--before--the
18 expiration--of--the--period--of--commitment--the--court--determines
19 after--hearing--evidence--that--a--defendant--who--has--been
20 released--under--[section--9(3)]--has--not--fulfilled--the
21 conditions--of--his--release--and--that--for--his--own--safety--or--the
22 safety--of--others--his--conditional--release--should--be--revoked--
23 the--court--shall--immediately--order--him--to--be--recommitted--to
24 the--custody--of--the--superintendent--of--Worm--Springs--state
25 hospital--to--be--placed--in--the--same--or--another--appropriate

1 institution--for--custody--care--and--treatment--

2 SECTION 11. THERE IS A NEW MCA SECTION THAT READS:

3 Discharge of defendant from supervision. At the
4 expiration of the period of commitment or period of
5 treatment specified by the court under [section 9(2)], the
6 defendant must be discharged from custody and further
7 supervision, subject only to the law regarding the civil
8 commitment of persons suffering from serious mental illness.

9 SECTION 12. SECTION 46-14-401, MCA, IS AMENDED TO
10 READ:

11 "46-14-401. Admissibility of statements made during
12 examination or treatment. A statement made for the purposes
13 of psychiatric examination or treatment provided for in this
14 chapter by a person subjected to such examination or
15 treatment is not admissible in evidence against him in any
16 criminal proceeding, except a sentencing hearing conducted
17 under [section 8 9] or a hearing on recommitment conducted
18 under [section 10 11], on any issue other than that of his
19 mental condition. It is admissible on the issue of his
20 mental condition, whether or not it would otherwise be
21 considered a privileged communication, unless it constitutes
22 an admission of guilt of the crime charged. In a hearing
23 held under [section 8 9] or [section 10 11], the court may
24 bear and consider any such statement even if it constitutes
25 an admission of guilt."

1 Section 13. Section 46-15-301, MCA, is amended to
2 read:

3 "46-15-301. Discovery of witnesses, notice of certain
4 defenses. In all criminal cases originally triable in
5 district court the following rules apply:

6 (1) For the purpose of notice only and to prevent
7 surprise, the prosecution shall furnish to the defendant and
8 file with the clerk of the court at the time of arraignment
9 a list of the witnesses the prosecution intends to call. The
10 prosecution may, any time after arraignment, add to the list
11 the names of any additional witnesses upon a showing of good
12 cause. The list shall include the names and addresses of the
13 witnesses. This subsection does not apply to rebuttal
14 witnesses.

15 (2) (a) For purpose of notice only and to prevent
16 surprise, the defendant shall furnish to the prosecution and
17 file with the clerk of the court, at the time of entering
18 his plea of not guilty or within 10 days thereafter or at
19 such later time as the court may for good cause permit, a
20 statement of intention to interpose the defense of mental
21 ~~disease or defect, self-defense, or alibi or the defense~~
22 ~~that the defendant did not have a particular state of mind~~
23 ~~that is an essential element of the offense charged.~~

24 (b) If the defendant intends to interpose any of these
25 defenses, he shall also furnish to the prosecution and file

1 with the clerk of the court the names and addresses of all
2 witnesses to be called by the defense in support thereof.
3 Prior to trial the defendant may, upon motion and showing of
4 good cause, add to the list of witnesses the names of any
5 additional witnesses. After the trial commences, no
6 witnesses may be called by the defendant in support of these
7 defenses unless the name of the witness is included on the
8 list, except upon good cause shown."

9 Section 14. Repealer. Sections ~~46-14-101 and 46-14-211~~
10 ~~AND 46-14-301 THROUGH 46-14-304, MCA, are repeated~~ SECTION
11 ~~46-14-211, MCA, IS REPEALED. a~~

-End-

HOUSE BILL NO. 877

INTRODUCED BY KEEDY, SEIFERT, CONROY, SCULLY, FABREGA, GOULD,
MAGONE, KANDUCH, NORDTVEDT, MARKS, FAGG, PORTER, C. SMITH,
DONALDSON, FEDA, CURTISS, ELLISON, PISTORIA,
STAIGMILLER, MANNING, K. ROBBINS, UNDERDAL,
FRATES, SALES, PAVLOVICH, UMDE, DOZIER,
BAETH, MANUEL, HEMSTAD, MEYER, EUDAILY,
DAY, STOBIE, KVAALEN, HAYNE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE DEFENSE
OF MENTAL DISEASE OR DEFECT IN CRIMINAL ACTIONS AND TO
PROVIDE AN ALTERNATIVE SENTENCING PROCEDURE TO BE FOLLOWED
WHEN A CONVICTED DEFENDANT IS FOUND TO HAVE BEEN SUFFERING
FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE
COMMISSION OF THE OFFENSE OF WHICH HE WAS CONVICTED;
AMENDING SECTIONS ~~46-14-101~~, 46-14-201 THROUGH 46-14-203,
46-14-212, 46-14-213, 46-14-221, 46-14-222, 46-14-301
~~46-14-301~~ ~~46-14-401~~, AND 46-15-301, MCA; AND REPEALING
SECTIONS ~~46-14-101~~ AND SECTION 46-14-211 ~~AND 46-14-301~~
~~IN ADDITION TO 46-14-364~~, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 46-14-101, MCA, IS AMENDED TO READ:

"46-14-101. Mental disease or defect excluding
responsibility. (1) A person is not responsible for criminal

conduct if at the time of such conduct as a result of mental
disease or defect he is unable either to appreciate the
criminality of his conduct or to conform his conduct to the
requirements of law

(2) As used in this chapter, the term "mental disease
or defect" does not include an abnormality manifested only
by repeated criminal or other antisocial conduct."

Section 2. Section 46-14-201, MCA, is amended to read:

"46-14-201. Affirmative defense requirement
Requirement of notice -- form of verdict and judgment. (1)
Mental disease or defect excluding responsibility is an
affirmative defense which the defendant must establish by a
preponderance of the evidence

(2) Evidence of mental disease or defect excluding
responsibility is not admissible in a trial on the merits
unless the defendant, at the time of entering his plea of
not guilty or within 10 days thereafter or at such later
time as the court may for good cause permit, files a written
notice of his purpose to rely on such defense

(3) The defendant shall give similar notice when in a
trial on the merits he intends to rely on a mental disease
or defect to prove that he did not have a particular state
of mind which is an essential element of the offense
charged. Otherwise, except on good cause shown, he shall not
introduce in his case in chief expert testimony in support

1 of that defense.

2 ~~{4}{12}~~ When the defendant is acquitted on the ground
3 of ~~that due to a~~ mental disease or defect excluding
4 ~~responsibility he could not have a particular state of mind~~
5 ~~that is an essential element of the offense charged,~~ the
6 verdict and the judgment shall so state."

7 Section 3. Section 46-14-202, MCA, is amended to read:

8 "46-14-202. Psychiatric examination of defendant. (1)
9 ~~When the defendant has filed a notice of intention to rely~~
10 ~~on the defense of mental disease or defect excluding~~
11 ~~responsibility or there is reason to doubt his the~~
12 ~~defendant's~~ fitness to proceed or reason to believe that
13 mental disease or defect of the defendant will otherwise
14 become an issue in the cause, the court shall appoint at
15 least one qualified psychiatrist or shall request the
16 superintendent of Warm Springs state hospital to designate
17 at least one qualified psychiatrist, which designation may
18 be or include himself, to examine and report upon the mental
19 condition of the defendant.

20 (2) The court may order the defendant to be committed
21 to a hospital or other suitable facility for the purpose of
22 the examination for a period of not exceeding 60 days or
23 such longer period as the court determines to be necessary
24 for the purpose and may direct that a qualified psychiatrist
25 retained by the defendant be permitted to witness and

1 participate in the examination.

2 (3) In the examination any method may be employed
3 which is accepted by the medical profession for the
4 examination of those alleged to be suffering from mental
5 disease or defect."

6 Section 4. Section 46-14-203, MCA, is amended to read:

7 "46-14-203. Report of the examination. (1) The report
8 of the examination shall include the following:

9 (a) a description of the nature of the examination;

10 (b) a diagnosis of the mental condition of the
11 defendant;

12 (c) if the defendant suffers from a mental disease or
13 defect, an opinion as to his capacity to understand the
14 proceedings against him and to assist in his own defense;
15 and

16 ~~{d}--when a notice of intention to rely on the defense~~
17 ~~of irresponsibility has been filed, an opinion as to the~~
18 ~~ability of the defendant to appreciate the criminality of~~
19 ~~his conduct or to conform his conduct to the requirements of~~
20 ~~law at the time of the criminal conduct charged; and~~

21 ~~{e}{d}~~ when directed by the court, an opinion as to
22 the capacity of the defendant to have a particular state of
23 mind which is an element of the offense charged.

24 (2) If the examination cannot be conducted by reason
25 of the unwillingness of the defendant to participate

therein, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(3) The report of the examination shall be filed in triplicate with the clerk of court, who shall deliver copies to the county attorney and to counsel for the defendant."

~~Section 4. Section 46-14-212, MCA, is amended to read:~~

~~"46-14-212. Examination by psychiatrist chosen by state or defendant. If either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or other expert selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether he had, at the time the offense was committed, a particular state of mind which is an essential element of the offense, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination."~~

Section 5. Section 46-14-213, MCA, is amended to read:

"46-14-213. Psychiatric testimony upon trial. (1) Upon the trial, any psychiatrist who reported under 46-14-202 and 46-14-203 may be called as a witness by the prosecution or by the defense. If the issue is being tried before a jury, the jury may not be informed that the psychiatrist was designated by the court or by the superintendent of Warm Springs state hospital. Both the prosecution and the

defense may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition or responsibility of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist or other expert who has examined the defendant testifies concerning the defendant's mental condition, he may make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to appreciate the criminality of his conduct, to conform his conduct to the requirements of law, or to have a particular state of mind which is an element of the offense charged. The expert may make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion."

Section 6. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1) The issue of the defendant's fitness to proceed may only be raised by the defendant with the advice of counsel. When the defendant's

1 ~~fitness-to-proceed issue~~ is drawn-in--question raised, the
 2 ~~issue~~ it shall be determined by the court. If neither the
 3 county attorney nor counsel for the defendant contests the
 4 finding of the report filed under 46-14-203, the court may
 5 make the determination on the basis of the report. If the
 6 finding is contested, the court shall hold a hearing on the
 7 issue. If the report is received in evidence upon the
 8 hearing, the parties have the right to summon and
 9 cross-examine the psychiatrists who joined in the report and
 10 to offer evidence upon the issue.

11 (2) If the court determines that the defendant lacks
 12 fitness to proceed, the proceeding against him shall be
 13 suspended, except as provided in subsection (4) of this
 14 section, and the court shall commit him to the custody of
 15 the director of the department of institutions to be placed
 16 in an appropriate institution of the department of
 17 institutions for so long as the unfitness endures.

18 (3) If the court determines that the defendant lacks
 19 fitness to proceed due to the fact that the person is
 20 developmentally disabled, as defined by 53-20-102, the
 21 proceeding against him shall be suspended, except as
 22 provided in subsection (4) of this section, and the court
 23 shall proceed to secure treatment as provided in chapter 20,
 24 part 1, or chapter 21, part 1, of Title 53.

25 (4) The fact that the defendant is unfit to proceed

1 does not preclude any legal objection to the prosecution
 2 which is susceptible to fair determination prior to trial
 3 and without the personal participation of the defendant.

4 (5) The expenses of sending the defendant to the
 5 custody of the director of the department of institutions to
 6 be placed in an appropriate institution of the state
 7 department of institutions, of keeping him there, and of
 8 bringing him back are in the first instance chargeable to
 9 the county in which the indictment was found or the
 10 information filed; but the county may recover them from the
 11 estate of the defendant, if he has any, or from a town,
 12 city, or county bound to provide for and maintain him
 13 elsewhere."

14 Section 7. Section 46-14-222, MCA, is amended to read:

15 "46-14-222. Proceedings if fitness regained. When the
 16 court, on its own motion or upon the application of the
 17 director of the department of institutions, the county
 18 attorney, or the defendant or his legal representative,
 19 determines, after a hearing if a hearing is requested, that
 20 the defendant has regained fitness to proceed, the
 21 proceeding shall be resumed. If, however, the court is of
 22 the view that so much time has elapsed since the commitment
 23 of the defendant that it would be unjust to resume the
 24 criminal proceedings, the court may dismiss the charge and
 25 may order the defendant to be discharged or, subject to the

law governing the civil commitment of persons suffering from serious mental disease--or--defect illness, order the defendant committed to an appropriate institution of the department of institutions."

Section 14--Section 46-14-301--MCA--is--amended--to read:

"46-14-301--Commitment upon acquittal on the ground of irresponsibility lack of mental state ---- hearing -- to determine -- release -- or -- discharge -- (1) When a defendant is acquitted on the ground of that due to a mental disease or defect -- excluding -- responsibility he could not have a particular state of mind that is an essential element of the offense charged, the court shall order him committed to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment.

(2) A person so confined shall have a hearing, unless waived, within 50 days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released.

(3) According to the determination of the court upon the hearing, the defendant shall be discharged -- or -- released on such conditions as the court determines to be necessary or shall be committed to the custody of the superintendent of the Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment."

SECTION 8. SECTION 46-14-301, MCA, IS AMENDED TO READ:

"46-14-301. Commitment upon acquittal on the ground of irresponsibility lack of mental state -- hearing to determine release or discharge. (1) When a defendant is acquitted on the ground of that due to a mental disease or defect excluding responsibility he could not have a particular state of mind that is an essential element of the offense charged, the court shall order him committed to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution for custody, care, and treatment.

(2) A person so confined shall have a hearing, unless waived, within 50 days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding, and the burden shall be upon the defendant to prove by a preponderance of the evidence

1 that he may be safely released.

2 (3) According to the determination of the court upon
3 the hearing, the defendant shall be discharged or released
4 on such conditions as the court determines to be necessary
5 or shall be committed to the custody of the superintendent
6 of the Warm Springs state hospital to be placed in an
7 appropriate institution for custody, care, and treatment."

8 SECTION 9. THERE IS A NEW MCA SECTION THAT READS:

9 Consideration of mental disease or defect in
10 sentencing. Whenever a defendant is convicted on a verdict
11 or a plea of guilty and he claims that at the time of the
12 commission of the offense of which he was convicted he was
13 ~~unable-as-a-result-of~~ SUFFERING FROM A mental disease or
14 defect ~~either which rendered him unable~~ to appreciate the
15 criminality of his conduct or to conform his conduct to the
16 requirements of law, the sentencing court shall consider
17 ~~evidence-obtained-as-provided-in-46-14-202-and-46-14-203-and~~
18 any other relevant evidence presented at the trial and shall
19 require such additional evidence as it considers necessary
20 for the determination of the issue, including examination of
21 the defendant and a report thereof as provided in 46-14-202
22 and 46-14-203.

23 SECTION 10. THERE IS A NEW MCA SECTION THAT READS:

24 Sentence to be imposed. (1) If the court finds that the
25 defendant at the time of the commission of the offense of

1 which he was convicted did not suffer from a mental disease
2 or defect as described in [section 8 2], it shall sentence
3 him as provided in Title 46, chapter 18.

4 (2) If the court finds that the defendant at the time
5 of the commission of the offense suffered from a mental
6 disease or defect as described in [section 8 2], any
7 mandatory minimum sentence prescribed by law for the offense
8 does ~~need~~ not apply and the court shall sentence him to:

9 (a) be committed to the custody of the superintendent
10 ~~of-Warm-Springs-state-hospital~~ director of the department of
11 institutions to be placed in an appropriate institution for
12 custody, care, and treatment for a definite period of time
13 not to exceed the maximum term of imprisonment that could be
14 imposed under subsection (1); or

15 (b) undergo for such a period any other appropriate
16 course of treatment that is accepted by the medical
17 profession and that will not present a danger to the public.

18 ~~(3)--if---the---court---sentences---the---defendant---under~~
19 ~~subsection-(2)-(a)-it-may-provide-that-the-professiona~~
20 ~~person-in-charge-of-the-institution-in-which-the-defendant~~
21 ~~is-placed-may-release-the-defendant-on-condition---after--a~~
22 ~~specified-period-of-time-that-is-less-than-his-period-of~~
23 ~~commitment-if-the-professiona-person-determines-that-the~~
24 ~~defendant-has-been-cured-of-the-mental-disease-or-defect~~
25 ~~found-by-the-court-and-is-no-longer-a-danger-to-himself-or~~

1 others--if--the--professional--person--releases--the--defendant
2 pursuant--to--this--subsection--he--shall--report--the--release--and
3 the--conditions--placed--on--it--to--the--court--

4 {4}(3) A defendant whose disposition or sentence--does
5 not--allow--for--conditional--release--by--the--professional--person
6 in--charge--of--the--institution--as--provided--in--subsection--(3)--
7 whose--sentence--has--been--imposed--under--[section 10(2)(a)]--
8 may petition the sentencing court for review of the sentence
9 if the professional person certifies that the defendant has
10 been cured of the mental disease or defect. The sentencing
11 court may make any order not inconsistent with its original
12 sentencing authority except that the length of confinement
13 or supervision may--not--be--increased must be equal to that of
14 the original sentence. The professional person shall review
15 the defendant's status each year.

16 ~~SECTION 18--THERE IS A NEW MCA SECTION THAT READS:~~

17 Recommitment--after--conditional--release--if--before--the
18 expiration--of--the--period--of--commitment--the--court--determines
19 after--hearing--evidence--that--a--defendant--who--has--been
20 released--under--[section--9(3)]--has--not--fulfilled--the
21 conditions--of--his--release--and--that--for--his--own--safety--or--the
22 safety--of--others--his--conditional--release--should--be--revoked--
23 the--court--shall--immediately--order--him--to--be--recommitted--to
24 the--custody--of--the--superintendent--of--Warm--Springs--state
25 hospital--to--be--placed--in--the--same--or--another--appropriate

1 institution--for--custody--care--and--treatment--

2 SECTION 11. THERE IS A NEW MCA SECTION THAT READS:

3 Discharge of defendant from supervision. At the
4 expiration of the period of commitment or period of
5 treatment specified by the court under [section 9 10(2)],
6 the defendant must be discharged from custody and further
7 supervision, subject only to the law regarding the civil
8 commitment of persons suffering from serious mental illness.

9 SECTION 12. SECTION 46-14-401, MCA, IS AMENDED TO
10 READ:

11 "46-14-401. Admissibility of statements made during
12 examination or treatment. A statement made for the purposes
13 of psychiatric examination or treatment provided for in this
14 chapter by a person subjected to such examination or
15 treatment is not admissible in evidence against him in any
16 criminal proceedings, except a sentencing hearing conducted
17 under [section 8 9] or a hearing on recommitment conducted
18 under [section 18-11], on any issue other than that of his
19 mental condition. It is admissible on the issue of his
20 mental condition, whether or not it would otherwise be
21 considered a privileged communication, unless it constitutes
22 an admission of guilt of the crime charged. In a hearing
23 held under [section 8 9] or [section 18-11], the court may
24 bear and consider any such statement even if it constitutes
25 an admission of guilt."

1 Section 13. Section 46-15-301, MCA, is amended to
2 read:

3 "46-15-301. Discovery of witnesses; notice of certain
4 defenses. In all criminal cases originally triable in
5 district court the following rules apply:

6 (1) For the purpose of notice only and to prevent
7 surprise, the prosecution shall furnish to the defendant and
8 file with the clerk of the court at the time of arraignment
9 a list of the witnesses the prosecution intends to call. The
10 prosecution may, any time after arraignment, add to the list
11 the names of any additional witnesses upon a showing of good
12 cause. The list shall include the names and addresses of the
13 witnesses. This subsection does not apply to rebuttal
14 witnesses.

15 (2) (a) For purpose of notice only and to prevent
16 surprise, the defendant shall furnish to the prosecution and
17 file with the clerk of the court, at the time of entering
18 his plea of not guilty or within 10 days thereafter or at
19 such later time as the court may for good cause permit, a
20 statement of intention to interpose the defense of mental
21 ~~disease-or-defect, self-defense, or alibi or the defense~~
22 ~~that the defendant did not have a particular state of mind~~
23 ~~that is an essential element of the offense charged.~~

24 (b) If the defendant intends to interpose any of these
25 defenses, he shall also furnish to the prosecution and file

1 with the clerk of the court the names and addresses of all
2 witnesses to be called by the defense in support thereof.
3 Prior to trial the defendant may, upon motion and showing of
4 good cause, add to the list of witnesses the names of any
5 additional witnesses. After the trial commences, no
6 witnesses may be called by the defendant in support of these
7 defenses unless the name of the witness is included on the
8 list, except upon good cause shown."

9 Section 14. Repealer. Sections 46-14-101 and 46-14-211
10 ~~AND 46-14-301 THROUGH 46-14-304, MCA, are repealed~~ SECTION
11 ~~46-14-211, MCA, IS REPEALED.~~

-End-

'7-7-2101. Limitation on amount of county indebtedness or liability. (1) No county may become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding 18% of the taxable value of the property therein subject to taxation as ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness.

(2) ~~No~~ A county may incur indebtedness or liability for any single purpose to an amount not exceeding \$40,000 \$100,000 without the approval of a majority of the electors thereof voting at an election to be provided by law, except as provided in 7-21-3413 and 7-21-3414. Liability for lease obligations may be incurred as follows:

(a) A county may enter into a lease agreement for a term of years in an amount not in excess of \$100,000.

(b) A county may enter into a lease agreement, which may be canceled at the end of each annually renewable term if sufficient funds are not appropriated for rental payments for the next fiscal year, provided rental payments are not in excess of \$100,000 for a 1-year period."

FOR THE HOUSE:

MCBRIDE
MEYER
WALDRON

FOR THE SENATE:

ROSKIE
THOMAS
LOCKREM

FREE JOINT CONFERENCE COMMITTEE
ON HOUSE BILL NO. 877
Report No. 1, April 13, 1979

Mr. President and Speaker of the House:

We, your Free Joint Conference Committee on House Bill No. 877, met April 13, 1979, and considered:

1. Senate Committee on Judiciary amendments to the third reading copy, dated March 22, 1979;
2. Senate Committee of the Whole amendments to the third reading copy, dated March 26, 1979; and
3. Senate Committee of the Whole amendments to the third reading copy, dated March 27, 1979.

We recommend that:

1. the Senate recede from Committee amendment number 6 and the House accede to Committee amendment numbers 1, 2, 3, 4, 5, 7, 8, 9, and 10;
2. the House accede to Committee of the Whole amendment numbers 1, 2, 3, 4, and 5, dated March 26, 1979;
3. the House accede to Committee of the Whole amendment number 1, dated March 27, 1979;
4. House Bill No. 877 be further amended as indicated in CLERICAL INSTRUCTION numbers 1, 3, 4, and 5;
5. the reference (engrossed) copy of House Bill No. 877 read as specified in the CLERICAL INSTRUCTIONS;
6. the Conference Committee Report to House Bill No. 877 be adopted.

CLERICAL INSTRUCTIONS:

1. Title, line 17.

Following: "~~46-14-212,~~"

Insert: "46-14-212,"

2. Page 5.

Following: line 17

Insert: "SECTION 5. SECTION 46-14-212, MCA, IS AMENDED TO READ:

'46-14-212. Examination by psychiatrist chosen by state or defendant. If either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or other expert selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether he had, at the time the offense was committed, a particular state of mind which is an essential element of the offense, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination."

3. Page 12, line 8.

Following: "him to"

Strike: ":",

4. Page 12, line 9.

Following: line 8

Strike: "(a)"

5. Page 12, line 14.

Following: "(1)"

Strike: "; or"

Insert: ":",

6. Page 12, lines 15 through 18.

Strike: subsection (2)(b) in its entirety

Insert: "The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, provided the treatment of the individual and the protection of the public are provided for."

FOR THE HOUSE:

FOR THE SENATE:

KEEDY
CONROY
STOBIE

LENSINK
STIMATZ
O'HARA

MESSAGES FROM THE OTHER HOUSE

The Senate on 4/16/79, requested the return of the following House Bill for further consideration:

House Bill No. 915, introduced by Taxation Committee (Huennekens, Chairman)

FIRST READING AND COMMITMENT OF BILLS AND RESOLUTIONS

The following House joint resolution was introduced, read first time and referred to committee:

HJR 69, introduced by Waldron, Moore, Nordtvedt, Marks, Curtiss, Bennett, Tropila, Lory, Ellis, Eudaily, Hemstad, Reichert, Holmes, Gould, Hayne, Fagg, Kemmis, Bengtson, Day, Pistoria, H. Robbins, Frates, Dozier, Metcalf, Teague, Rosenthal, Harper. Referred to Committee on Judiciary.

HOUSE BILL NO. 877

INTRODUCED BY KEODY, SEIFERT, CONROY, SCULLY, FABREGA, GOULD,
MAGONE, KANDUCH, NOROTVEDT, MARKS, FAGG, PORTER, C. SMITH,
DONALDSON, FEDA, CURTISS, ELLISON, PISTORIA,
STAIGMILLER, MANNING, K. ROBBINS, UNDERDAL,
FRATES, SALES, PAVLOVICH, UHDE, DOZIER,
BAETH, MANUEL, HEMSTAD, MEYER, EUDAILY,
DAY, STOBIE, KVAALEN, HAYNE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE DEFENSE
OF MENTAL DISEASE OR DEFECT IN CRIMINAL ACTIONS AND TO
PROVIDE AN ALTERNATIVE SENTENCING PROCEDURE TO BE FOLLOWED
WHEN A CONVICTED DEFENDANT IS FOUND TO HAVE BEEN SUFFERING
FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE
COMMISSION OF THE OFFENSE OF WHICH HE WAS CONVICTED;
AMENDING SECTIONS ~~46-14-101~~, 46-14-201 THROUGH 46-14-203,
46-14-212, ~~46-14-212~~, 46-14-213, 46-14-221, 46-14-222,
46-14-301 ~~46-14-301~~, ~~46-14-401~~, AND 46-15-301, MCA; AND
REPEALING SECTIONS ~~46-14-101~~ AND SECTION 46-14-211 AND
~~46-14-301 THROUGH 46-14-304~~, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 46-14-101, MCA, IS AMENDED TO READ:

"46-14-101. Mental disease or defect ~~excluding~~
~~responsibility. (1) A person is not responsible for criminal~~

~~conduct if at the time of such conduct as a result of mental~~
~~disease or defect he is unable either to appreciate the~~
~~criminality of his conduct or to conform his conduct to the~~
~~requirements of law.~~

(2) As used in this chapter, the term "mental disease
or defect" does not include an abnormality manifested only
by repeated criminal or other antisocial conduct."

Section 2. Section 46-14-201, MCA, is amended to read:

"46-14-201. ~~Affirmative defense requirement~~
~~Requirement of notice -- form of verdict and judgment. (1)~~
~~Mental disease or defect excluding responsibility is an~~
~~affirmative defense which the defendant must establish by a~~
~~preponderance of the evidence.~~

(2)(1) Evidence of mental disease or defect ~~excluding~~
~~responsibility~~ is not admissible in a trial on the merits
unless the defendant, at the time of entering his plea of
not guilty or within 10 days thereafter or at such later
time as the court may for good cause permit, files a written
notice of his purpose to rely on such defense.

(3) ~~The defendant shall give similar notice when, in a~~
~~trial on the merits, he intends to rely on a mental disease~~
~~or defect to prove that he did not have a particular state~~
~~of mind which is an essential element of the offense~~
~~charged. Otherwise, except on good cause shown, he shall not~~
introduce in his case in chief expert testimony in support

1 of that defense.

2 ~~{+}(2)~~ When the defendant is acquitted on the ground
3 of ~~that due to a~~ mental disease or defect ~~excluding~~
4 ~~responsibility he could not have a particular state of mind~~
5 ~~that is an essential element of the offense charged,~~ the
6 verdict and the judgment shall so state."

7 Section 3. Section 46-14-202, MCA, is amended to read:

8 "46-14-202. Psychiatric examination of defendant. (1)
9 ~~When the defendant has filed a notice of intention to rely~~
10 ~~on the defense of mental disease or defect excluding~~
11 ~~responsibility or there is reason to doubt his the~~
12 ~~defendant's~~ fitness to proceed or reason to believe that
13 mental disease or defect of the defendant will otherwise
14 become an issue in the cause, the court shall appoint at
15 least one qualified psychiatrist or shall request the
16 superintendent of Warm Springs state hospital to designate
17 at least one qualified psychiatrist, which designation may
18 be or include himself, to examine and report upon the mental
19 condition of the defendant.

20 (2) The court may order the defendant to be committed
21 to a hospital or other suitable facility for the purpose of
22 the examination for a period of not exceeding 60 days or
23 such longer period as the court determines to be necessary
24 for the purpose and may direct that a qualified psychiatrist
25 retained by the defendant be permitted to witness and

1 participate in the examination.

2 (3) In the examination any method may be employed
3 which is accepted by the medical profession for the
4 examination of those alleged to be suffering from mental
5 disease or defect."

6 Section 4. Section 46-14-203, MCA, is amended to read:

7 "46-14-203. Report of the examination. (1) The report
8 of the examination shall include the following:

- 9 (a) a description of the nature of the examination;
- 10 (b) a diagnosis of the mental condition of the
- 11 defendant;
- 12 (c) if the defendant suffers from a mental disease or
- 13 defect, an opinion as to his capacity to understand the
- 14 proceedings against him and to assist in his own defense;
- 15 and

16 ~~{d} when a notice of intention to rely on the defense~~
17 ~~of irresponsibility has been filed, an opinion as to the~~
18 ~~ability of the defendant to appreciate the criminality of~~
19 ~~his conduct or to conform his conduct to the requirements of~~
20 ~~law at the time of the criminal conduct charged; and~~

21 ~~{+}(d)~~ when directed by the court, an opinion as to
22 the capacity of the defendant to have a particular state of
23 mind which is an element of the offense charged.

24 (2) If the examination cannot be conducted by reason
25 of the unwillingness of the defendant to participate

therein, the report shall so state and shall include, if possible, an opinion as to whether the unwillingness of the defendant was the result of mental disease or defect.

(3) The report of the examination shall be filed in triplicate with the clerk of court, who shall deliver copies to the county attorney and to counsel for the defendant."

~~Section 4. Section 46-14-212, MCA, is amended to read:~~

~~"46-14-212. Examination by psychiatrist chosen by state or defendant. If either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or other expert selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether he had, at the time the offense was committed, a particular state of mind which is an essential element of the offense, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination."~~

SECTION 5. SECTION 46-14-212, MCA, IS AMENDED TO READ:

"46-14-212. Examination by psychiatrist chosen by state or defendant. If either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or other expert selected by the one proposing the examination in order to determine the defendant's fitness to proceed or whether he had, at the time the offense was committed, a particular state of mind which is

an essential element of the offense, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination."

Section 6. Section 46-14-213, MCA, is amended to read:

"46-14-213. Psychiatric testimony upon trial. (1) Upon the trial, any psychiatrist who reported under 46-14-202 and 46-14-203 may be called as a witness by the prosecution or by the defense. If the issue is being tried before a jury, the jury may not be informed that the psychiatrist was designated by the court or by the superintendent of Warm Springs state hospital. Both the prosecution and the defense may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition ~~or responsibility~~ of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(2) When a psychiatrist or other expert who has examined the defendant testifies concerning the defendant's mental condition, he may make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his opinion as to the ability of the defendant ~~to appreciate the criminality of his conduct to conform his~~

~~conduct-to-the-requirements-of-law-or-to~~ have a particular state of mind which is an element of the offense charged. The expert may make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion."

Section 7. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1) ~~The issue of the defendant's fitness to proceed may only be raised by the defendant with the advice of counsel.~~ When the defendant's fitness-to-proceed issue is drawn-in-question raised, the issue it shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall commit him to the custody of

the director of the department of institutions to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures.

(3) If the court determines that the defendant lacks fitness to proceed due to the fact that the person is developmentally disabled, as defined by 53-20-102, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall proceed to secure treatment as provided in chapter 20, part 1, or chapter 21, part 1, of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of institutions to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back are in the first instance chargeable to the county in which the indictment was found or the information filed; but the county may recover them from the estate of the defendant, if he has any, or from a town, city, or county bound to provide for and maintain him elsewhere."

Section 8. Section 46-14-222, MCA, is amended to read:

1 *46-14-222. Proceedings if fitness regained. When the
2 court, on its own motion or upon the application of the
3 director of the department of institutions, the county
4 attorney, or the defendant or his legal representative,
5 determines, after a hearing if a hearing is requested, that
6 the defendant has regained fitness to proceed, the
7 proceeding shall be resumed. If, however, the court is of
8 the view that so much time has elapsed since the commitment
9 of the defendant that it would be unjust to resume the
10 criminal proceedings, the court may dismiss the charge and
11 may order the defendant to be discharged or, subject to the
12 law governing the civil commitment of persons suffering from
13 ~~serious mental disease--or--defect illness~~, order the
14 defendant committed to an appropriate institution of the
15 department of institutions."

16 ~~Section 8--Section 46-14-301, MCA, is amended to read:~~

17 ~~"46-14-301. Commitment upon acquittal on the ground of~~
18 ~~irresponsibility lack of mental state -- hearing to~~
19 ~~determine release or discharge. (1) When a defendant is~~
20 ~~acquitted on the ground of that due to a mental disease or~~
21 ~~defect excluding responsibility he could not have a~~
22 ~~particular state of mind that is an essential element of the~~
23 ~~offense charged, the court shall order him committed to the~~
24 ~~custody of the superintendent of Warm Springs state hospital~~
25 ~~to be placed in an appropriate institution for custody~~

1 ~~care and treatment~~

2 ~~(2) A person so confined shall have a hearing unless~~
3 ~~waived, within 50 days of his confinement to determine his~~
4 ~~present mental condition and whether he may be discharged or~~
5 ~~released without danger to others. The court shall cause~~
6 ~~notice of the hearing to be served upon the person, his~~
7 ~~counsel, and the prosecuting attorney. Such a hearing shall~~
8 ~~be deemed a civil proceeding and the burden shall be upon~~
9 ~~the defendant to prove by a preponderance of the evidence~~
10 ~~that he may be safely released.~~

11 ~~(3) According to the determination of the court upon~~
12 ~~the hearing, the defendant shall be discharged or released~~
13 ~~on such conditions as the court determines to be necessary~~
14 ~~or shall be committed to the custody of the superintendent~~
15 ~~of the Warm Springs state hospital to be placed in an~~
16 ~~appropriate institution for custody care and treatment."~~

17 ~~SECTION 9. SECTION 46-14-301, MCA, IS AMENDED TO READ:~~

18 ~~"46-14-301. Commitment upon acquittal on the ground of~~
19 ~~irresponsibility lack of mental state -- hearing to~~
20 ~~determine release or discharge. (1) When a defendant is~~
21 ~~acquitted on the ground of that due to a mental disease or~~
22 ~~defect excluding responsibility he could not have a~~
23 ~~particular state of mind that is an essential element of the~~
24 ~~offense charged, the court shall order him committed to the~~
25 ~~custody of the superintendent of Warm Springs state hospital~~

1 to be placed in an appropriate institution for custody,
2 care, and treatment.

3 (2) A person so confined shall have a hearing, unless
4 waived, within 50 days of his confinement to determine his
5 present mental condition and whether he may be discharged or
6 released without danger to others. The court shall cause
7 notice of the hearing to be served upon the person, his
8 counsel, and the prosecuting attorney. Such a hearing shall
9 be deemed a civil proceeding, and the burden shall be upon
10 the defendant to prove by a preponderance of the evidence
11 that he may be safely released.

12 (3) According to the determination of the court upon
13 the hearing, the defendant shall be discharged or released
14 on such conditions as the court determines to be necessary
15 or shall be committed to the custody of the superintendent
16 of the Warm Springs state hospital to be placed in an
17 appropriate institution for custody, care, and treatment."

18 SECTION 10. THERE IS A NEW MCA SECTION THAT READS:

19 Consideration of mental disease or defect in
20 sentencing. Whenever a defendant is convicted on a verdict
21 or a plea of guilty and he claims that at the time of the
22 commission of the offense of which he was convicted he was
23 ~~unable--as-a--result--of~~ SUFFERING FROM A mental disease or
24 defect ~~either~~ WHICH RENDERED HIM UNABLE to appreciate the
25 criminality of his conduct or to conform his conduct to the

1 requirements of law, the sentencing court shall consider
2 ~~evidence obtained as provided in 46-14-202 and 46-14-203 and~~
3 any other relevant evidence presented at the trial and shall
4 require such additional evidence as it considers necessary
5 for the determination of the issue, including examination of
6 the defendant and a report thereof as provided in 46-14-202
7 and 46-14-203.

8 SECTION 11. THERE IS A NEW MCA SECTION THAT READS:

9 Sentence to be imposed. (1) If the court finds that the
10 defendant at the time of the commission of the offense of
11 which he was convicted did not suffer from a mental disease
12 or defect as described in [section 8 2], it shall sentence
13 him as provided in Title 46, chapter 18.

14 (2) If the court finds that the defendant at the time
15 of the commission of the offense suffered from a mental
16 disease or defect as described in [section 8 2], any
17 mandatory minimum sentence prescribed by law for the offense
18 does NEED not apply and the court shall sentence him to+

19 ~~(a) be committed to the custody of the superintendent~~
20 ~~of Warm Springs state hospital~~ DIRECTOR OF THE DEPARTMENT OF
21 INSTITUTIONS to be placed in an appropriate institution for
22 custody, care, and treatment for a DEFINITE period OF TIME
23 not to exceed the maximum term of imprisonment that could be
24 imposed under subsection (1) ~~or~~.

25 (b) undergo for such a period any other appropriate

course of treatment that is accepted by the medical profession and that will not present a danger to the public. THE AUTHORITY OF THE COURT WITH REGARD TO SENTENCING IS THE SAME AS AUTHORIZED IN TITLE 46, CHAPTER 18, PROVIDED THE TREATMENT OF THE INDIVIDUAL AND THE PROTECTION OF THE PUBLIC ARE PROVIDED FOR.

~~{3} If the court sentences the defendant under subsection {2}(a), it may provide that the professional person in charge of the institution in which the defendant is placed may release the defendant on condition after a specified period of time that is less than his period of commitment if the professional person determines that the defendant has been cured of the mental disease or defect found by the court and is no longer a danger to himself or others. If the professional person releases the defendant pursuant to this subsection, he shall report the release and the conditions placed on it to the court.~~

~~{4}{3} A defendant whose disposition or sentence does not allow for conditional release by the professional person in charge of the institution, as provided in subsection {3},~~ WHOSE SENTENCE HAS BEEN IMPOSED UNDER [SECTION 11(2)], may petition the sentencing court for review of the sentence if the professional person certifies that the defendant has been cured of the mental disease or defect. The sentencing court may make any order not inconsistent with its original

sentencing authority except that the length of confinement or supervision ~~may not be increased~~ MUST BE EQUAL TO THAT OF THE ORIGINAL SENTENCE. The professional person shall review the defendant's status each year.

~~SECTION 10. THERE IS A NEW MCA SECTION THAT READS:~~

~~Recommitment after conditional releases. If before the expiration of the period of commitment the court determines after hearing evidence that a defendant who has been released under [section 9(3)] has not fulfilled the conditions of his release and that for his own safety or the safety of others his conditional release should be revoked, the court shall immediately order him to be recommitted to the custody of the superintendent of Warm Springs State Hospital to be placed in the same or another appropriate institution for custody, care, and treatment.~~

SECTION 12. THERE IS A NEW MCA SECTION THAT READS:

Discharge of defendant from supervision. At the expiration of the period of commitment or period of treatment specified by the court under [section 9 11(2)], the defendant must be discharged from custody and further supervision, subject only to the law regarding the civil commitment of persons suffering from serious mental illness.

SECTION 13. SECTION 46-14-401, MCA, IS AMENDED TO READ:

"46-14-401. Admissibility of statements made during

1 examination or treatment. A statement made for the purposes
 2 of psychiatric examination or treatment provided for in this
 3 chapter by a person subjected to such examination or
 4 treatment is not admissible in evidence against him in any
 5 criminal proceeding, except a sentencing hearing conducted
 6 under [section 9] or a hearing on recommitment conducted
 7 under [section 18-11], on any issue other than that of his
 8 mental condition. It is admissible on the issue of his
 9 mental condition, whether or not it would otherwise be
 10 considered a privileged communication, unless it constitutes
 11 an admission of guilt of the crime charged. In a hearing
 12 held under [section 9] or [section 18-11], the court may
 13 hear and consider any such statement even if it constitutes
 14 an admission of guilt."

15 Section 14. Section 46-15-301, MCA, is amended to
 16 read:

17 "46-15-301. Discovery of witnesses, notice of certain
 18 defenses. In all criminal cases originally triable in
 19 district court the following rules apply:

20 (1) For the purpose of notice only and to prevent
 21 surprise, the prosecution shall furnish to the defendant and
 22 file with the clerk of the court at the time of arraignment
 23 a list of the witnesses the prosecution intends to call. The
 24 prosecution may, any time after arraignment, add to the list
 25 the names of any additional witnesses upon a showing of good

1 cause. The list shall include the names and addresses of the
 2 witnesses. This subsection does not apply to rebuttal
 3 witnesses.

4 (2) (a) For purpose of notice only and to prevent
 5 surprise, the defendant shall furnish to the prosecution and
 6 file with the clerk of the court, at the time of entering
 7 his plea of not guilty or within 10 days thereafter or at
 8 such later time as the court may for good cause permit, a
 9 statement of intention to interpose the defense of ~~mental~~
 10 ~~disease or defect~~, self-defense, or alibi or the defense
 11 that the defendant did not have a particular state of mind
 12 that is an essential element of the offense charged.

13 (b) If the defendant intends to interpose any of these
 14 defenses, he shall also furnish to the prosecution and file
 15 with the clerk of the court the names and addresses of all
 16 witnesses to be called by the defense in support thereof.
 17 Prior to trial the defendant may, upon motion and showing of
 18 good cause, add to the list of witnesses the names of any
 19 additional witnesses. After the trial commences, no
 20 witnesses may be called by the defendant in support of these
 21 defenses unless the name of the witness is included on the
 22 list, except upon good cause shown."

23 Section 15. Repealer. ~~Sections 46-14-101 and 46-14-211~~
 24 ~~AND 46-14-301 THROUGH 46-14-304, MCA, are repealed~~ SECTION
 25 46-14-211, MCA, IS REPEALED.

HOUSE BILL NO. 877

INTRODUCED BY KEEDY, SEIFERT, CONROY, SCULLY, FABREGA, GOULD,
MAGONE, KANDUCH, NORDTVEDT, MARKS, FAGG, PORTER, C. SMITH,
DONALDSON, FEDA, CURTISS, ELLISON, PISTORIA,
STAIGMILLER, MANNING, K. ROBBINS, UNDERDAL,
FRATES, SALES, PAVLOVICH, UMDE, DOZIER,
BAETH, MANUEL, HEMSTAD, MEYER, EUDAILY,
DAY, STOBIE, KVAALEN, HAYNE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE DEFENSE
OF MENTAL DISEASE OR DEFECT IN CRIMINAL ACTIONS AND TO
PROVIDE AN ALTERNATIVE SENTENCING PROCEDURE TO BE FOLLOWED
WHEN A CONVICTED DEFENDANT IS FOUND TO HAVE BEEN SUFFERING
FROM A MENTAL DISEASE OR DEFECT AT THE TIME OF THE
COMMISSION OF THE OFFENSE OF WHICH HE WAS CONVICTED;
AMENDING SECTIONS ~~46-14-101~~, 46-14-201 THROUGH 46-14-203,
~~46-14-212~~, ~~46-14-212~~, 46-14-213, 46-14-221, 46-14-222,
~~46-14-301~~ ~~46-14-301~~, ~~46-14-401~~, AND 46-15-301, MCA; AND
REPEALING SECTIONS ~~46-14-101~~ ~~AND~~ SECTION 46-14-211 ~~AND~~
~~46-14-301~~ ~~THROUGH~~ ~~46-14-301~~, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

SECTION 1. SECTION 46-14-101, MCA, IS AMENDED TO READ:

"46-14-101. Mental disease or defect excluding
responsibility. ~~(1) A person is not responsible for criminal~~

~~conduct if at the time of such conduct as a result of mental~~
~~disease or defect he is unable either to appreciate the~~
~~criminality of his conduct or to conform his conduct to the~~
~~requirements of law~~

(2) As used in this chapter, the term "mental disease
or defect" does not include an abnormality manifested only
by repeated criminal or other antisocial conduct."

Section 2. Section 46-14-201, MCA, is amended to read:

"46-14-201. Affirmative ~~defense~~ ~~requirement~~
~~Requirement~~ of notice -- form of verdict and judgment. ~~(1)~~
~~Mental disease or defect excluding responsibility is an~~
~~affirmative defense which the defendant must establish by a~~
~~preponderance of the evidence~~

~~(2)(1)~~ Evidence of mental disease or defect excluding
responsibility is not admissible in a trial on the merits
unless the defendant, at the time of entering his plea of
not guilty or within 10 days thereafter or at such later
time as the court may for good cause permit, files a written
notice of his purpose to rely on such defense

~~(3) The defendant shall give similar notice when in a~~
~~trial on the merits he intends to rely on a mental disease~~
~~or defect to prove that he did not have a particular state~~
~~of mind which is an essential element of the offense~~
~~charged. Otherwise, except on good cause shown, he shall not~~
introduce in his case in chief expert testimony in support

1 of that defense.

2 ~~(4)(2)~~ When the defendant is acquitted on the ground
3 of ~~that due to a~~ mental disease or defect excluding
4 responsibility ~~he could not have a particular state of mind~~
5 ~~that is an essential element of the offense charged,~~ the
6 verdict and the judgment shall so state."

7 Section 3. Section 46-14-202, MCA, is amended to read:

8 "46-14-202. Psychiatric examination of defendant. (1)
9 ~~When the defendant has filed a notice of intention to rely~~
10 ~~on the defense of mental disease or defect excluding~~
11 ~~responsibility or there is reason to doubt his~~ ~~the~~
12 ~~defendant's~~ fitness to proceed or reason to believe that
13 mental disease or defect of the defendant will otherwise
14 become an issue in the cause, the court shall appoint at
15 least one qualified psychiatrist or shall request the
16 superintendent of Warm Springs state hospital to designate
17 at least one qualified psychiatrist, which designation may
18 be or include himself, to examine and report upon the mental
19 condition of the defendant.

20 (2) The court may order the defendant to be committed
21 to a hospital or other suitable facility for the purpose of
22 the examination for a period of not exceeding 60 days or
23 such longer period as the court determines to be necessary
24 for the purpose and may direct that a qualified psychiatrist
25 retained by the defendant be permitted to witness and

1 participate in the examination.

2 (3) In the examination any method may be employed
3 which is accepted by the medical profession for the
4 examination of those alleged to be suffering from mental
5 disease or defect."

6 Section 4. Section 46-14-203, MCA, is amended to read:

7 "46-14-203. Report of the examination. (1) The report
8 of the examination shall include the following:

9 (a) a description of the nature of the examination;

10 (b) a diagnosis of the mental condition of the
11 defendant;

12 (c) if the defendant suffers from a mental disease or
13 defect, an opinion as to his capacity to understand the
14 proceedings against him and to assist in his own defense;
15 and

16 ~~(d) when a notice of intention to rely on the defense~~
17 ~~of irresponsibility has been filed, an opinion as to the~~
18 ~~ability of the defendant to appreciate the criminality of~~
19 ~~his conduct or to conform his conduct to the requirements of~~
20 ~~law at the time of the criminal conduct charged; and~~

21 ~~(e)~~ (d) when directed by the court, an opinion as to
22 the capacity of the defendant to have a particular state of
23 mind which is an element of the offense charged.

24 (2) If the examination cannot be conducted by reason
25 of the unwillingness of the defendant to participate

1 therein, the report shall so state and shall include, if
2 possible, an opinion as to whether the unwillingness of the
3 defendant was the result of mental disease or defect.

4 (3) The report of the examination shall be filed in
5 triplicate with the clerk of court, who shall deliver copies
6 to the county attorney and to counsel for the defendant."

7 ~~Section 46-14-212, MCA, is amended to read:~~

8 ~~"46-14-212. Examination by psychiatrist chosen by~~
9 ~~state or defendant. If either the defendant or the state~~
10 ~~wishes the defendant to be examined by a qualified~~
11 ~~psychiatrist or other expert selected by the one proposing~~
12 ~~the examination in order to determine the defendant's~~
13 ~~fitness to proceed or whether he had, at the time the~~
14 ~~offense was committed, a particular state of mind which is~~
15 ~~an essential element of the offense, the examiner shall be~~
16 ~~permitted to have reasonable access to the defendant for the~~
17 ~~purpose of the examination."~~

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19 "46-14-212. Examination by psychiatrist chosen by
20 state or defendant. If either the defendant or the state
21 wishes the defendant to be examined by a qualified
22 psychiatrist or other expert selected by the one proposing
23 the examination in order to determine the defendant's
24 fitness to proceed or whether he had, at the time the
25 offense was committed, a particular state of mind which is

1 an essential element of the offense, the examiner shall be
2 permitted to have reasonable access to the defendant for the
3 purpose of the examination."

4 Section 6. Section 46-14-213, MCA, is amended to read:

5 "46-14-213. Psychiatric testimony upon trial. (1) Upon
6 the trial, any psychiatrist who reported under 46-14-202 and
7 46-14-203 may be called as a witness by the prosecution or
8 by the defense. If the issue is being tried before a jury,
9 the jury may not be informed that the psychiatrist was
10 designated by the court or by the superintendent of Warm
11 Springs state hospital. Both the prosecution and the
12 defense may summon any other qualified psychiatrist or other
13 expert to testify, but no one who has not examined the
14 defendant is competent to testify to an expert opinion with
15 respect to the mental condition ~~or responsibility~~ of the
16 defendant, as distinguished from the validity of the
17 procedure followed by or the general scientific propositions
18 stated by another witness.

19 (2) When a psychiatrist or other expert who has
20 examined the defendant testifies concerning the defendant's
21 mental condition, he may make a statement as to the nature
22 of his examination, his diagnosis of the mental condition of
23 the defendant at the time of the commission of the offense
24 charged, and his opinion as to the ability of the defendant
25 to ~~appreciate the criminality of his conduct, to conform his~~

conduct-to-the-requirements-of-law-or-to have a particular state of mind which is an element of the offense charged. The expert may make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion."

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"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1) The issue of the defendant's fitness to proceed may only be raised by the defendant with the advice of counsel. When the defendant's fitness-to-proceed issue is drawn-in-question raised, the issue it shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under 46-14-203, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall commit him to the custody of

the director of the department of institutions to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures.

(3) If the court determines that the defendant lacks fitness to proceed due to the fact that the person is developmentally disabled, as defined by 53-20-102, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall proceed to secure treatment as provided in chapter 20, part 1, or chapter 21, part 1, of Title 53.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the director of the department of institutions to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back are in the first instance chargeable to the county in which the indictment was found, or the information filed; but the county may recover them from the estate of the defendant, if he has any, or from a town, city, or county bound to provide for and maintain him elsewhere."

Section 8. Section 46-14-222, MCA, is amended to read:

"46-14-222. Proceedings if fitness regained. When the court, on its own motion or upon the application of the director of the department of institutions, the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged or, subject to the law governing the civil commitment of persons suffering from serious mental disease or defect illness, order the defendant committed to an appropriate institution of the department of institutions."

Section 8. Section 46-14-301, MCA, is amended to read:

"46-14-301. Commitment upon acquittal on the ground of irresponsibility lack of mental state --- hearing to determine release or discharge. (1) When a defendant is acquitted on the ground of that due to a mental disease or defect excluding responsibility he could not have a particular state of mind that is an essential element of the offense charged, the court shall order him committed to the custody of the superintendent of Warm Springs state hospital to be placed in an appropriate institution for custody,

care and treatment.

(2) A person so confined shall have a hearing unless waived within 50 days of his confinement to determine his present mental condition and whether he may be discharged or released without danger to others. The court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney. Such a hearing shall be deemed a civil proceeding and the burden shall be upon the defendant to prove by a preponderance of the evidence that he may be safely released.

(3) According to the determination of the court upon the hearing, the defendant shall be discharged or released on such conditions as the court determines to be necessary or shall be committed to the custody of the superintendent of the Warm Springs state hospital to be placed in an appropriate institution for custody, care and treatment."

SECTION 9. SECTION 46-14-301, MCA, IS AMENDED TO READ:

"46-14-301. Commitment upon acquittal on the ground of irresponsibility lack of mental state -- hearing to determine release or discharge. (1) When a defendant is acquitted on the ground of that due to a mental disease or defect excluding responsibility he could not have a particular state of mind that is an essential element of the offense charged, the court shall order him committed to the custody of the superintendent of Warm Springs state hospital

1 to be placed in an appropriate institution for custody,
2 care, and treatment.

3 (2) A person so confined shall have a hearing, unless
4 waived, within 50 days of his confinement to determine his
5 present mental condition and whether he may be discharged or
6 released without danger to others. The court shall cause
7 notice of the hearing to be served upon the person, his
8 counsel, and the prosecuting attorney. Such a hearing shall
9 be deemed a civil proceeding, and the burden shall be upon
10 the defendant to prove by a preponderance of the evidence
11 that he may be safely released.

12 (3) According to the determination of the court upon
13 the hearing, the defendant shall be discharged or released
14 on such conditions as the court determines to be necessary
15 or shall be committed to the custody of the superintendent
16 of the Warm Springs state hospital to be placed in an
17 appropriate institution for custody, care, and treatment."

18 SECTION 10. THERE IS A NEW MCA SECTION THAT READS:

19 Consideration of mental disease or defect in
20 sentencing. Whenever a defendant is convicted on a verdict
21 or a plea of guilty and he claims that at the time of the
22 commission of the offense of which he was convicted he was
23 ~~unable--as-a-result-of~~ SUFFERING FROM A mental disease or
24 defect either WHICH RENDERED HIM UNABLE to appreciate the
25 criminality of his conduct or to conform his conduct to the

1 requirements of law, the sentencing court shall consider
2 ~~evidence-obtained-as-provided-in-46-14-202-and-46-14-203-and~~
3 any other relevant evidence presented at the trial and shall
4 require such additional evidence as it considers necessary
5 for the determination of the issue, including examination of
6 the defendant and a report thereof as provided in 46-14-202
7 and 46-14-203.

8 SECTION 11. THERE IS A NEW MCA SECTION THAT READS:

9 Sentence to be imposed. (1) If the court finds that the
10 defendant at the time of the commission of the offense of
11 which he was convicted did not suffer from a mental disease
12 or defect as described in [section 8 2], it shall sentence
13 him as provided in Title 46, chapter 18.

14 (2) If the court finds that the defendant at the time
15 of the commission of the offense suffered from a mental
16 disease or defect as described in [section 8 2], any
17 mandatory minimum sentence prescribed by law for the offense
18 ~~does~~ NEED not apply and the court shall sentence him to+

19 ~~(a) be committed to the custody of the superintendent~~
20 ~~of-Warm-Springs-state-hospital~~ DIRECTOR OF THE DEPARTMENT OF
21 INSTITUTIONS to be placed in an appropriate institution for
22 custody, care, and treatment for a DEFINITE period OF TIME
23 not to exceed the maximum term of imprisonment that could be
24 imposed under subsection (1)+or,

25 ~~(b)--undergo-for-such-a-period--any--other--appropriate~~

course--of--treatment--that--is--accepted--by--the--medical
 profession--and--that--will--not--present--a--danger--to--the--public
THE AUTHORITY OF THE COURT WITH REGARD TO SENTENCING IS THE
SAME AS AUTHORIZED IN TITLE 46, CHAPTER 18, PROVIDED THE
TREATMENT OF THE INDIVIDUAL AND THE PROTECTION OF THE PUBLIC
ARE PROVIDED FOR.

{3}--if--the--court--sentences--the--defendant--under
 subsection--(2)(a)--it--may--provide--that--the--professional
 person--in--charge--of--the--institution--in--which--the--defendant
 is--placed--may--release--the--defendant--on--condition--after--a
 specified--period--of--time--that--is--less--than--his--period--of
 commitment--if--the--professional--person--determines--that--the
 defendant--has--been--cured--of--the--mental--disease--or--defect
 found--by--the--court--and--is--no--longer--a--danger--to--himself--or
 others--if--the--professional--person--releases--the--defendant
 pursuant--to--this--subsection--he--shall--report--the--release--and
 the--conditions--placed--on--it--to--the--court--

{4}{3} A defendant whose disposition or sentence does
 not--allow--for--conditional--release--by--the--professional--person
 in--charge--of--the--institution--as--provided--in--subsection--(3)--
WHOSE SENTENCE HAS BEEN IMPOSED UNDER [SECTION 11(2)], may
 petition the sentencing court for review of the sentence if
 the professional person certifies that the defendant has
 been cured of the mental disease or defect. The sentencing
 court may make any order not inconsistent with its original

sentencing authority except that the length of confinement
 or supervision may not be increased MUST BE EQUAL TO THAT OF
THE ORIGINAL SENTENCE. The professional person shall review
 the defendant's status each year.

~~SECTION 19. THERE IS A NEW MCA SECTION THAT READS:~~

Recommitment--after--conditional--release--if--before--the
 expiration--of--the--period--of--commitment--the--court--determines
 after--hearing--evidence--that--a--defendant--who--has--been
 released--under--[section--9(3)]--has--not--fulfilled--the
 conditions--of--his--release--and--that--for--his--own--safety--or--the
 safety--of--others--his--conditional--release--should--be--revoked--
 the--court--shall--immediately--order--him--to--be--recommitted--to
 the--custody--of--the--superintendent--of--Worm--Springs--state
 hospital--to--be--placed--in--the--same--or--another--appropriate
 institution--for--custody--care--and--treatment--

SECTION 12. THERE IS A NEW MCA SECTION THAT READS:

Discharge of defendant from supervision. At the
 expiration of the period of commitment or period of
 treatment specified by the court under [section 9 11(2)],
 the defendant must be discharged from custody and further
 supervision, subject only to the law regarding the civil
 commitment of persons suffering from serious mental illness.

SECTION 13. SECTION 46-14-401, MCA, IS AMENDED TO
READ:

"46-14-401. Admissibility of statements made during

1 examination or treatment. A statement made for the purposes
 2 of psychiatric examination or treatment provided for in this
 3 chapter by a person subjected to such examination or
 4 treatment is not admissible in evidence against him in any
 5 criminal proceeding, except a sentencing hearing conducted
 6 under [section 2 2] or a hearing on recommitment conducted
 7 under [section 10-11], on any issue other than that of his
 8 mental condition. It is admissible on the issue of his
 9 mental condition, whether or not it would otherwise be
 10 considered a privileged communication, unless it constitutes
 11 an admission of guilt of the crime charged. In a hearing
 12 held under [section 2 2] or [section 10-11], the court may
 13 hear and consider any such statement even if it constitutes
 14 an admission of guilt."

15 Section 14. Section 46-15-301, MCA, is amended to
 16 read:

17 "46-15-301. Discovery of witnesses, notice of certain
 18 defenses. In all criminal cases originally triable in
 19 district court the following rules apply:

20 (1) For the purpose of notice only and to prevent
 21 surprise, the prosecution shall furnish to the defendant and
 22 file with the clerk of the court at the time of arraignment
 23 a list of the witnesses the prosecution intends to call. The
 24 prosecution may, any time after arraignment, add to the list
 25 the names of any additional witnesses upon a showing of good

1 cause. The list shall include the names and addresses of the
 2 witnesses. This subsection does not apply to rebuttal
 3 witnesses.

4 (2) (a) For purpose of notice only and to prevent
 5 surprise, the defendant shall furnish to the prosecution and
 6 file with the clerk of the court, at the time of entering
 7 his plea of not guilty or within 10 days thereafter or at
 8 such later time as the court may for good cause permit, a
 9 statement of intention to interpose the defense of mental
 10 disease or defect, self-defense, or alibi or the defense
 11 that the defendant did not have a particular state of mind
 12 that is an essential element of the offense charged.

13 (b) If the defendant intends to interpose any of these
 14 defenses, he shall also furnish to the prosecution and file
 15 with the clerk of the court the names and addresses of all
 16 witnesses to be called by the defense in support thereof.
 17 Prior to trial the defendant may, upon motion and showing of
 18 good cause, add to the list of witnesses the names of any
 19 additional witnesses. After the trial commences, no
 20 witnesses may be called by the defendant in support of these
 21 defenses unless the name of the witness is included on the
 22 list, except upon good cause shown."

23 Section 15. Repealer. ~~Sections 46-14-101 and 46-14-211~~
 24 ~~AND 46-14-301 THROUGH 46-14-304, MCA, are repeated~~ SECTION
 25 ~~46-14-211, MCA, IS REPEALED.~~